

THE
Complete Copy-holder;

BEING

A Learned Discourse of the Antiquity
and Nature of

Manors and Copy-holds,

with all things thereto Incident.

By Sir **EDWARD COKE**, Knight.

Whereunto is added

A SUPPLEMENT

By way of

ADDITIONS to, and **AMPLIFICATIONS** of
the fore-going Treatise.

Both of them Necessary as well for Lord as Tenant.

240
LONDON,

Printed by *E. Fletcher, John Streater, and Henry
Twyford, Assignes of Richard Atkyns, and Edward
Atkyns, Esquires, 1673.*

Cum Gratia & Privilegio Regiæ Majestatis.


Complete Copy
C6822



Rec. Oct. 11, 1882

TO THE

READER.

 His Copy coming to my hands, perused and revered by men Learned in the Laws, I thought most worthy of Publication. The very name of the *Composer*, who hath been an Ornament to our Kingdome, is enough to give it sufficient Authority, and indear it to every wise opinion. But the Profit which doth attend is most considerable; it being a Subject so ma-

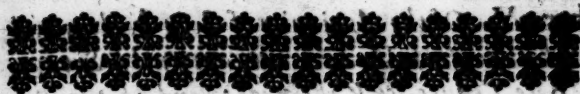
A 2

terial,

The Epistle, &c.

terial, declaring the Antiquity of *Manors* and *Copy-holds*, and written for the good of *Lords* and *Tenants*, and by consequence of all men, it cannot but receive a becoming entertainment. In the confidence of this truth, I refer it to all judicious perusal, not a little congratulating my own happiness, to have been an Instrument of bringing so excellent a Piece from obscurity, for the benefit of the Commonwealth.

W. C.



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divided into Chapters, according to the
nature of the matter therein contained.

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their Tenures, and Services to them
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MANORS AND COPY-HOLDS.

SECTION I.



Though a Manor and Copyhold have such mutual respect and reciprocal reference one to the other, as that they are almost in nature of Relatives; yet the knowledge of the one cannot be attained unto, unless the sense of the other be truly apprehended: for a Manor is as the Body, and Copy-holds certain Members of this Body. In this Treatise I will discourse of them severally apart, and
 B begin

begin with the *Manor* it self, especially when common Reason teacheth us, that *Totum magis illustrat Partes, quàm Partes aliqua illustrant Totum.*

SECT. II.

THE *Saxons* (who held *England* in subjection immediately before the coming of the *Normans*) were unacquainted with these *Manors*, yet in effect they had *Manors* in those days in circumstance peradventure something varying, in substance surely nothing differing from our *Manors* at this day; they wanted neither *Demefnes* nor *Services*, the two material *Causes* of a *Manor*, as *Fulbeck* termeth them. Their *Demefnes* they termed *Inlands*, because the *Lords* kept them in their own hands, and enjoyed them in their own possession; their *Services* they termed *Outlands*, because those *Lands* were in the manurance and occupation of certain *Tenants*, who, in consideration of the *Profits* arising out of these *Lands*, were bound to perform unto their *Lords* certain *Duties* and *Services*. Their *Demefnes* were of two sorts, and their *Services* likewise were of two sorts.

Fulbeck in
his fourth
Decalogue.

SECT. III.

ONE sort of their Demesnes was termed **Bockland**, because they passed by Book ; and they in effect differed nothing from our Free-hold-Lands at this day.

SECT. IV.

THE other sort of their Demesnes was termed **Folklands**, because they passed by Polls, and were claimed and challeng'd by the Tenants ; not by any Assurance in Writings, but only by the mouth of the people, *per vocem populi* : and they in effect differed in nothing from Copy-hold-Lands at this day.

SECT. V.

Touching their Services, one sort of their Services were *Servitia libera*, which consisted most commonly in *Render*, as to pay yearly such a Rent ; or in *Ufer*, as where the Lord reserved Common for his Cattel ; or in *Prender*, as where the Lord reserved three shillings, and four loads of Estovers for fuel, to be taken yearly in his Tenant's Grounds.

SECT. VI.

THE other sort of Services were *Servitia villana*, which consisted altogether in Feasance; as to scour the Lord's Ditches, to tile his Houses, to thatch his Barns, or such like.

SECT. VII.

AND in the Reservation of these Services the Lords had a special respect unto the quality of the Land: did they transfer their Bock-lands, that is, Free-hold-Lands, they would never reserve villain Services; did they transfer their Folk-lands, that is, Copy-hold-Lands, they would never reserve free Services; but still they suited their Services according to the nature of the Land. The reason I gather was this: In those days none but men of good account and reckoning enjoyed the said Bock-lands, whereas Folk-lands were in the hands of men of meaner sort and condition; and therefore had not the Lords care been extraordinary in reserving apt Service, they should have much wronged their Tenants. And thus much

Lamb. in his
Explicat'on
of the Saxon
word *Terra*
ex scripto.

Lambert verifieth, saying, *Terra ex scripto fuit hereditaria, libera, at-*

que

que immunis; Terra verò sine scripto Officiorum quadam servitute fuit obligata: prioremplerumque nobiles atq; ingenui, posteriorem verò rustici ferè & pagani possidebant. Lambert termeth these Bock-lands *Terras liberas atque immunes*; non quòd ab omnibus Servitiis fuerunt liberae aut immunes, sed quòd Tenentes ipsi fuerunt liberi, & Servitiis tantùm liberis onerati. But I much wonder why this Bock-land doth to this day retain the name of Free-hold-Land, sithence time hath bred such an alteration, that in the point of Service a man can scarce discern any difference between Free-hold-Lands and Copy-hold-Lands. The favourable hand of Time hath so infranchised these Copy-holders, that whereas in the Saxons time their Services did consist wholly in Feasance, now they consist in Render, in User, and in Prender: as Free-holders Services did in those days. And on the other side, Time hath dealt so unfavourably with Free-holders, and hath so abridged them of their former Freedome, that if you compare the Service of the Free-holders with the Service of the Copy-holders, *senties hunc potius quàm illum fore liberum*. How many Free-holders are there at this day charged with base Services? as many (I doubt not) as there are Copy-holders. No marvel then that many able men

turn Copy-holders, and many Peasants turn Free-holders: no marvell, I say, that men of all sorts and conditions, promiscuously, turn both Free-holders and Copy-holders, sithence there is such small respect had unto the quality of the Land in the reservation of our Services. Yet observe, I pray, though Time hath so infranchised these Copy-holders, that they have in a manner shaken off all villain Service; yet they retain a badge of their former bondage, for they remain still subject to their Lord's will; therefore at this day they are termed Tenants at will. But with Free-holders otherwise it is, for they are not in that subjection to their Lords. Peradventure in this respect onely Bock-lands may be termed Free-hold-Lands, and Folk-land Villain-Lands: and yet time hath dealt very favourably with Copy-holders in this point of Will, as well as in the point of Service.

SECT. VIII.

Braet. *ib.* 4.
 rr. 3. cap. 9.
 num. 5. Fleta
 lib. 5. cap. 51.

FOR, as I conjecture, in the Saxons time, sure I am in the Normans time, those Copy-holders were so far subject to the Lords will, that *eorum Tenentes tempestive & in tempestive pro voluntate Domini possent resumere* & re-

& *revocari*, as *Bracton* and *Fleta* both speak: The Lords upon the least occasion (sometimes without any colour of reason, onely upon discontentment and malice; sometimes again upon some sudden fantastick humour, onely to make evident to the world the height of their power and authority) would expell out of house and home their poor Copy-holders, leaving them helpless and remediless by any course of Law, and driving them to sue by way of Petition.

SECT. IX.

BUT now Copy-holders stand upon a sure ground, now they weigh not their Lords displeasure, they shake not at every sudden blast of wind, they eat, drink and sleep securely; onely having a special care of the main chance, (*viz.*) to perform carefully what Duties and Services soever their Tenure doth exact, and Custom doth require: then let Lord frown, the Copy-holder cares not, knowing himself safe, and not within any danger. For if the Lord's anger grow to Expulsion, the Law hath provided several weapons of remedy; for it is at his election either to sue a *Sub-pœna* or an Action of Trespals against the Lord. Time hath dealt very favourably with Copy-holders in divers respects.

SECT. X.

BUT I perceive my self rashly running in to an inextricable Labyrinth; I will therefore sail no longer in these unknown coasts, but will hasten homewards; I will content my self with this. I know amongst the *Saxons* the essential parts of a Manor were known; but whether there then were the same form of Manors which is at this day, that I dare not examine, for fear of being accounted more curious than judicious, and therefore leaving the *Saxons*, I draw somewhat nearer home, and come to the *Normans*, from whom we had the very form of Manors which is observed amongst us at this present hour,

SECT. XI.

I Confess, indeed, that sithence the original Creation of Manors, Time hath brought in some Innovations and Alterations, as in giving a large Freedome unto Copy-holders both in the nature of their Service, and in the manner of their Tenure. Yet I may boldly say, that the self-same form of Manors remains unaltered in substance, though something altered in circumstance. Demesne, termed in Latine
Demani-

Demanium, Domanium, or Dominicum, is taken in a double sense, *proprie*, and *improprie*. *Proprie*, for that Land which is in the King's own hands: and the *Chopimus* saith, that *Domanium est illud quod consecratum, unitum, & incorporatum est Regiæ Coronæ*. Take *Domanium* in this sense, and then you exclude all common persons from being seised in *Dominico*: for admit the King pass over the Demesne Lands, as soon as they come into a common person's hands *desinunt esse terra Dominicales*: for though the King's Patentee hath the Land granted to him and to his Heirs, yet coming from the King, it must necessarily be holden of the King, but it is contrary to the nature of Demesne Lands to be holden of any. Therefore though those Lands which commonly are termed *ancient Demesne*, viz. such Lands as were *quondam* in the hands of *Edward the Confessor*, may properly be termed generally ancient Demesne, because they were in ancient time in the King's own possession; yet to term them at this day the Lord's Demesnes, or the Tenant's Demesnes, being severed from the Crown, is improper. *Ca. quo supr.*

*Chopimus de
Domanio,
fronte lib. 2.*

SECT.

SECT. XII.

THen by this it appeareth that those Lands are termed *impropiè* Demesne which are in the hands of an inferiour Lord or Tenant, nor can such a one in propriety of speech be said to stand seised of any Land whatsoever in *Dominico suo*: but if you observe narrowly the manner of Pleadings, the words are used in a proper sense, for you shall never finde that an inferiour Lord or Tenant will plead that he is simply seised in *Dominico*, but still with this addition, in *Dominico suo ut de feodo*; and that very aptly, for this word *Fee* implieth thus much, that his Estate is not absolute, but depending upon some superiour Lord. Therefore I conclude, with the *Fendists*, that a common person may aptly be said to stand seised in *Feodo*, or in *Dominico suo ut de feodo*; but improperly in *Dominico* simply. The King, *è converso*, may properly be said to stand seised in *Dominico* simply; but in *Feodo* improperly, or in *Dominico suo ut de feodo*. *Bracton* divideth these Demesne Lands into two branches. Under the first are comprehended those Lands which the Lord injoyeth in his own possession; under the second, those Lands which are in the hands of the inferiour Copyholders.

holders. His words are these : *Dominicum dicitur quod quis habet ad mensam suam, & idcirco Anglice vocatur Bordland*; dicitur etiam *Dominicum Villenagium*, quod traditur Villanis, quod quis tempestivè & intempestivè resumere possit pro voluntate sua & revocare.

Bract. lib. 4.
tract. 3. cap.
9. num. 5.

SECT. XIII.

Fleta agreeeth with Bracton in this division, and unto these two he adds more sorts of Demesne Lands. His words are these : *Dominicum est multiplex. Est autem Dominicum propriè terra ad mensam assignata : & Villenagium quod traditur Villanis ad excolendum, quod tempestivè & intempestivè pro voluntate Domini poterit revocari, sicut est de terra commissa tenend. quamdiu commissori placuerit. Potebit & dici Dominicum de quo quis habet liberum tenementum, alius usumfructu. & etiam ubi quis habet liberum tenementum, aliter curam de Custode, dici poterit & Curatore ; quorum unus dicitur ab homine, alius in jure. Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. Dominicum denique est omne illud tenementum de quo antecessor obiit seifitus, nec refert cum usufructu vel sine, & de quo si ejectus esset recuperare possit*
per

Fleta lib. 3.
cap. 5.

per Affisam nova disseisina, licet alius haberet usufructum; sicut dici poterit de illis qui tenent in Villenagio, qui utuntur & fruuntur, non nomine proprio, sed nomine Domini sui.

SECT. XIV.

THIS opinion of *Bracton* and *Fleta*, both consenting in one, that Copy-hold-Land is parcell of the Lord's Demesnes, wanteth not modern authority to second it: for 15 *Eliz.* in the *Exchequer*, I find it adjudged in the Case of a common person, howsoever it is otherwise in the King's Case, That if the Lord of a Manor granteth away *omnes terras suas Dominicales*, the Copy-holds, parcell of the Manor, pass by these general words. Neither doth this want Reason to confirm it: for in the time of *Henry* the 3. and *Edw.* the 2. when *Bract.* and *Fleta* lived, Copy-holders were accounted meer Tenants at will, and therefore after a sort their Lands were reputed to continue still in the Lord's hands: and now, though Custome hath afforded them a surer foundation to build upon, yet the Frank-tenement at the Common Law resting in the Lord, it can be no strange thing to place the Lands under the rank of the Lord's Demesnes. But to deliver my minde more freely in this point, I think that howsoever,

ver, according to the strict rules of Law, these Copy-holds are parcell of Lords Demesnes, yet in propriety of speech (if propriety can be in impropriety) they are the more aptly called the Copy-holders Demesnes : for though the Frank-tenement be in the Lord by the Common Law, yet by the Custome the Inheritance abideth in the Copy-holders ; and it is not denied, if a Copy-holder be impleaded in making Title to his Copy-hold, he may justly plead, *quod est seisitus in Dominico suo*, with this addition, *secundum consuetud. Manerii*. Therefore I conclude, that howsoever the Common Law valueth the Title of the Copy-holder, yet he hath such an Interest confirmed unto him by Custome, that the Lord having no power to resume his Lands, at your own pleasure they are (though improperly) called (yet peradventure truly accounted) the Lord's Demesnes, and that in the eye of the world ; howsoever it be in the eye of the Law, that those Lands alone can properly challenge the name of the Lord's Demesnes (if any Lands in the possession of inferiour Lords may properly challenge that name) which the Lord reserveth in his own hands, for the maintenance of his own Boord or Table ; be it his Wast ground, his Arable ground, his Pasture ground, or his Meadow ; be it his Copy-hold which he hath
by

by Escheat, by Forfeiture, or by Purchase; or be it any part of his Free-hold-Land, of which I must speak a word by the way, not to prove that it is Demesne, for *manifesta probatione non indigent*, but to shew you in what sense it is taken, and how far it extendeth.

SECT. XV.

A Free-hold is taken a in double sense; either 'tis named a Free-hold in respect of the state of the Land, or in respect of the state of the Law.

SECT. XVI.

IN respect of the state of the Land; so Copy-holders may be Free-holders: for any that hath any Estate for his life, or any greater Estate, in any Land whatsoever, may, in this sense, be termed a Free-holder.

SECT. XVII.

IN respect of the state of the Law; and so it is opposed to Copy-holders, that what Land soever is not Copy-hold is Free-hold: and in this sense I take it throughout this Discourse.

SECT.

S E C T. XVIII.

TH E name of Free-holders extendeth not onely unto Lands held *per servitium militare*, as it did by the ancient Laws of *Scots*, amongst whom Free-holders were known by the name of *Milites*; but it reacheth likewise to Lands holden *per servitium Socæ*, whether in *libero Socagio*, or in *villano Socagio*. *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearly a certain summe of money in lieu of Tillage, and such like Services, and not by Escuage: and this is termed sometimes *common Socage*.

Skene de
verb. sign.
tit. Milit.

Socagium villanum is, where the ancient Services of carrying the Lord's Dung into the fields, of plowing his Ground at certain days, of plashing his Hedges, and such, are not turned into money, but remain still unaltered. And if you doubt that such Land as is held *per villanum Socagium* cannot come within the compass of Free-hold-Land; for your satisfaction, read *Bracton, lib. 2. cap. 8. num. 8. Hactenus de primo defunctionis membro: ad secundum properemus, & pauca de servitiis Domino debitis pertractemus*.

Stat. 37 H. 8.
cap. 20. it is
so called.

Services *in individuo* are manifold, *in specie* threefold: 1. Corporal Services, 2. Annual Services,

Services, 3. Accidental Services.

Corporal Services are of two sorts: Services of Submission, Services of Profit.

SECT. XIX.

Services of *Submission* are Homage and Fealty, which are certain Ceremonies used among Tenants, whereby they submit themselves unto their Lords, and bind themselves by solemn Oath, or by faithfull Promise, from that day forward to become the Lord's men for life, for member, for terrene honour, or, *ad minimum*, to owe unto him Faith, for the Lands which they hold of him. Both these Ceremonies are used at the first entrance or admittance of any Tenant, and both tend to one end, *viz.* to inforce every Tenant to acknowledge and confess himself Tenant unto his immediate Lord: yet they differ in many material Points.

SECT. XX.

1. **I**N regard of their severall manner of Performance: for in doing Fealty, the Tenant taketh a solemn Oath; in doing Homage, onely giveth his faithfull Promise. And thence it is that Fealty is accounted the more sacred Service, though Homage be the more humble

humble Service, and performed with far greater reverence than Fealty in many respects: For in doing Homage the Tenant kneeleth, in doing Fealty he standeth; in doing Homage the Tenant must remain uncovered, in doing Fealty he may remain covered; in doing Homage the Lord kisseth his Tenant, in doing Fealty he kisseth him not; lastly, in doing Homage the Tenant promiseth to become the Lord's man for life, for member, and terrene honour, in doing Fealty he only sweareth to become the Lord's faithfull Tenant. The reason of this difference I learn to be this: Because Homage especially concerneth Service in War, and properly appertaineth unto Knight's Service; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage-tenure. And though now 'tis held, that a Tenant by Socage may doe Homage, and that Homage *ex se* maketh Socage-tenure, and not Knight's Service: yet originally Homage was invented for Tenants by Knight's Service; and such as were bound by their Tenure to attend their Lords in the Wars; but Fealty was primarily devised for Tenants in Socage, and such as were bound by their Tenure to manure the Lord's ground, and carefully to discharge all rural affairs. And this

Skene de
verb. sign.
iii. Homage:

this agreeth with the ancient Laws in Scotland; for amongst them none were accounted Free-holders, but only Tenants by Knight's Service, and consequently none but they could do Homage. And therefore marvel not why in doing Homage the Tenant promiseth to become the Lord's man for life, for member, for terrene honour; in doing Fealty he only sweareth to become the Lord's faithfull Tenant.

2. They differ in regard of the Persons to whom they are performed, and that two ways.

1. In respect none is capable of receiving Homage but the Lord in person; but the Lord's Steward or his Bailiff is capable to receive Fealty in the Lord's behalf. 2. In respect that a Lord who hath but an Estate for his life in his Seigniori cannot receive Homage; but such a Lord may receive Fealty.

3. They differ in regard of the Persons by whom they are performed, and that two ways.

1. In respect that no Copy-holder is capable of doing Homage, but he is of doing Fealty, witness common experience. 2. In respect that a Tenant for life or years is unable to do Homage; for 'tis a ground in Law, that none can doe Homage but Tenant in Fee-simple, or *ad minimum*, Tenant in tail.

SECT. XXI.

But a Tenant for life or for years are both able to do Fealty, according to *Littleton's Rule*, that Fealties are incident to every Tenure, except Tenures in Frank-almoigne and Tenants at will, contrary to some erroneous opinions.

Brudnet and Toxley, 5 H. 7. The Justices of the Common Place, 10 H. 6. held that Lessee for years cannot do Fealty.

4. They differ in regard that Homage can be but once done unto one Lord by the same Tenant; and therefore 'tis agreed, that if Lands descend unto me which are holden of *J S* by Homage, and I do unto him Homage, and after other Lands descend unto me by another Ancestor, which is holden of the same Lord by Homage, I shall not do Homage again, but Fealty only, because I cannot twice become the Lord's man: but the self-same Tenant may several times do Fealty unto the self-same Lord; and therefore if a Copy-holder surrendreth *White-acre* unto me, for his *White-acre* I should do Fealty unto the Lord; if after another surrendreth unto me *Black-acre*, I shall do Fealty likewise unto the same Lord. And thus much for Services of Submission.

SECT. XXII.

Services of *Profits* are of two sorts. 1. Tending to the publick Profit of the Commonwealth; as when the Lord injoyneth his Tenant to amend High-ways, to repair decayed Bridges, or *similia*. 2. Tending to the private Profit of the Lord; as where the Tenant is injoynd to be the Lord's Carver, Butler, or Brewer, or is tied to pale the Lord's Parks, to tile the Lord's Houses, to thatch the Lord's Barns, and *similia*. And thus much for Corporal Services.

Annual Services are in number infinite, in nature all one, for they all tend to the increase of the Lord's Coffers, and are reserved in their Duties, as well for Copy-hold Land as Free-hold Land; though in the *Saxons* time, and long after the Conquest, they were never or seldome reserved for Copy-hold Land, but only for Free-hold Land. I will not enumerate many particulars of Annual Services, for that were as endless as numbring the sands of the Sea; only this I say, that those Annual Services which here come within the compass of my meaning consist all in Render, none in Feasance; for those Annual Services, as well as Accidental Services, which consist in Feasance,

I comprehend under Corporal Services.

Thus leaving both Corporal Services and Annual, I bend my course towards *Accidental* Services; which before I begin to particularize, observe these two things by the way.

1. That *Accidental* Services differ from Corporal and Annual Services in this, that most *Accidental* Services are incident to the Fee, and are due without special Reservation of the Lord; but most Corporal Services and all Annual Services are due upon special Reservation, and are not incident unto the Fee.

2. That Service is taken in a double sense, *in strictiori sensu*, and *in latiori sensu*. *In strictiori sensu*; and in that sense the *Fendists* define *Servitium fore munus obsequii clientelario, &c.* that Duty which the Tenant oweth unto his Lord, either in performing some corporal function, or in discharging some annual payment. *In latiori sensu*, and so it signifieth any Duty whatsoever accruing unto the Lord by reason of his Seigniorie: and in this sense these *Accidental* Services following (which *primâ facie* may seem better to rank under the Title of Jurisdiction, or rather under the name of the Fruits of a Manor) may very fitly be reduced to this kind of Services.

The Services I aim at, and which I mean to treat of particularly in this place, are these following.

- | | |
|----------------------|-------------------------|
| 1. <i>Wardships.</i> | 4. <i>Amerciaments.</i> |
| 2. <i>Herriots.</i> | 5. <i>Forfeitures.</i> |
| 3. <i>Reliefs.</i> | 6. <i>Escheats.</i> |

Now touching every one of these apart, and first of *Wardships*.

SECT. XXII.

Wardship est Custodia Heredis infra aetatem existentis. Polydore Virgil saith that this was *Novi vectigalis genus excogitatum* to help *Hen. 3.* being oppressed with much poverty, by reason he received the Kingdom greatly wasted by Wars of his Ancestors; and therefore needing extraordinary help to uphold his Estate, the use of Wardships was set abroad. But the 33. Chapter of the Grand Customary maketh mention of this manner have been used among the Normans immediately after the erection of Manors, and that the use of Wardships was afoot before *Hen.* the third's time; as appeareth manifestly by *Glanvil*, who writeth very largely

in many places in his Book, and lived in Hen-
the second's time. Guardians are either termed
Custodes, or *Curatores*; *Custodes à*
Lege, *Curatores ab homine*, as *Fleta*

*Fleta lib. 5.
cap. 5.*

speaketh. The Civilians make three

sorts of Guardian; 1. *Tutor testamentarius*,
2. *Tutor à Pratore datus*, 3. *Tutor legitimus*.

This in every point agreeth with our Com-
mon Law. So we have *Tutorem testa-*

rium, viz. where a man possessed of certain

Goods and Chattells demiseth these unto
his Child, and withall committeth the care

of his Child's body and disposition of his sub-
stance unto some Friend: this Committee is

Tutor testamentarius, unto whom belongeth
the care and custody of the Child's body and

the disposition of his substance, untill he ac-
complish the full age of fourteen years; and

then immediatly he shall be out of Ward
for his Body, but his Goods may be kept

longer; for as for them they shall remain
in the Trustees hands so many years as the

Testator appointed by his last Will and Testa-
ment: for though it be not in the Father's

power to restrain the liberty of his Child's
Body longer than to the age of 14, yet the

disposing of his Goods he may commit to
any for as long time as himself shall think

expedient. So by the Statute 32 and 34 H. 8.

If a man be seised of Socage-Lands, not holden of the King *in Capite*, he may by his last Will and Testament commit the ordering of those Lands to what Friends soever, for as many years as shall seem most convenient, and that Friend is *Tutor Testamentarius*. Otherwise it is of Lands holden by Knight's Service; for it is not in any man's power by his last Will and Testament to deprive the Lord of that Duty which *de jure* belongeth to him: and therefore if a Copyholder dieth, his Heir under the age of fourteen, in regard that this priviledge of appointing the Heir a Guardian for the Copyhold-Land, untill he accomplish the age of fourteen, *de jure* appertaineth unto the Lord, it seemeth that the Father cannot prejudice the Lord in this kind, by appointing him another Guardian by his last Will and Testament. *Hac de Tutore testamentario.*

2. We have *Tutorem à Pratore datum*, viz. where a man deviseth Goods unto his Child, and appointeth him not a Guardian, then it is in the Ordinarie's hand to commit the ordering of the Infant's Goods unto some trusty Friend, unto the age of fourteen; at what time the Infant himself may chuse a Guardian: for it is a Rule in the Civil Law, *Invito Curator non datur*. And this Committee *est Tu-*

tor à Pratore datus. These Guardians, termed amongst the Civilians *Tutores à Pratore dati*, are commonly called Guardians *pur nurture*: and thus in words we somewhat differ, in matter nothing. 3. We have *Tutorem legitimum*, viz. where the Interest doth *de jure* belong unto any, without the nomination of a private person; or the appointment of any publick Officer. And this Guardian is twofold; either *legitimus jure natura*, or *legitimus jure communi*. *Legitimus jure natura*, as where the Father or the Mother hath the Wardship of their Heirs apparent, be it Heir-male or female. *Legitimus jure communi*: and that Guardian is twofold; either Guardian in Chivalry, or Guardian in Socage. Guardian in *Chivalry* is, where any Tenant seised of Land holden by Knight's Service dieth, his Heir-male under the age of fourteen and unmarried; then shall the Lord have the Ward both of the Lands and Body of this Heir-male unto the age of 21, because the Law intendeth, that before that age the Heir is unable to perform Knight's Service, according to the Tenure. But the Heir-female shall be in ward no longer than to the age of sixteen, because the Heir-female, though she her self be unable to perform Knight's Service, yet at sixteen she is able to take a Husband, who in her behalf may do Knight's Service;

Service; and therefore at those years she shall be out of Ward. Nay, sometimes she shall be out of Ward before sixteen. And that is either where she is married at the death of her Ancestor, or where she is any whit above fourteen when her Ancestor dieth: in neither of these cases shall she be in Ward at all. For though the statute of *W. I. cap. II.* giveth unto the Lord two years next ensuing the fourteenth; yet that is to be understood, where she is under the age of fourteen and unmarried at her Ancestor's death, and not otherwise. This for Guardian in Chivalry. Guardian in *Socage* is, where any one seised of Socage-Lands dieth, his Heir under the age of fourteen; then the next Friend unto the Heir, to whom the Inheritance cannot descend, shall have the Ward of the Heir's Body and of his Land untill the age of fourteen: as if the Land descendeth unto the Heir, by the Father's side, then the Mother, or next Cosin of the Mother's side, shall have the Ward; and if the Land descendeth to the Heir by the Mother's side, then the Father, or next Cosin on the Father's side, shall have the Ward. To conclude, observe this difference between Guardian in Chivalry and Guardian in Socage: that the one receiveth the commodities of the Land to his

his own use, without giving any account; the other only to the use of the Heir, to whom he shall be accountable whensoever it shall please the Heir to call him to account after the age of fourteen.

Thus much concerning Wardships: a word concerning Herriots.

SECT. XXIV.

Herriot or Harriot cometh of the Latin word *Herus, Dominus*, because it is a Duty appropriated to the Lord: or it is derived from the *Saxon* Word *Here, Exercitus*, because in the *Saxons* time, when the name of Herriot was first known, Herriot signified nothing else but a Tribute given to the Lord for his better preparation towards War, as a Horse trapped, or a Spear, or Armour, or a Sword, or some such like military Weapon: and therefore in this sense, importing a thing appertaining to the War, and being due unto the Lord, by reason of this Service which Tenants owe unto their Lords in any warlike employments, it may very fitly be derived from hence. This their Herriot among the *Saxons* little differed from our Relief at this day, howsoever now they differ *ex diam-*

*Vide Lamb.
in his expli-
cation of Sa-
xon words,
tit. Herriot.*

870. But let us examine the nature of our Herriots at this day, and not search into the nature of their Herriots in those days ; for that were to examine the nature of Reliefs, not Herriots.

Britton thus speaketh : A Herriot is a Render made at the death of a Tenant to his Lord of the best Beast found in the possession of the Tenant deceased, or of some other, according to the ordinance and assignment of the party deceased to the use of the Lord ; which toucheth not the Land at all, nor the Heir, nor his Inheritance, neither hath any comparison to a Relief, for it proceedeth rather of grace and good will than of right, and rather from Villains than Freemen. To this effect speaketh *Fleta* : *Herriottum est quadam Præstatio ubi Tenens, liber vel servus, in morte sua Dominum suum respicit de meliori Averio suo, vel de secundo meliori : quæ quidem Præstatio magis fuit de gratia quàm de jure, & nullam habet comparationem ad Relevium, eò quòd Herredi non continget, quia factum Antecessoris.*

*Fleta, lib. 4.
cap. 18.*

This our Herriot is twofold ; Herriot-Service, Herriot-Custome. *Herriot-Service* is that Herriot which is never due without special Reservation, and is seldome reserved upon any less Estate than an Estate of Inheritance. *Herriot-Custome* is that Herriot which

is

is never due upon special Reservation, but is challenged upon some particular Custome, and is usually payd upon an Estate for life, and for years, as well as upon an Estate of Inheritance. Touching the original of these Herriots, doubtless they are not of that antiquity which the name doth promise: for though among the *Saxons* the name of Herriot was known, yet the nature of both these Herriots-Services and Herriot-Custome, was utterly unknown untill the coming of the *Normans*, who immediately upon the Conquest changed the name of the *Saxon-Herriot*, and termed it by the name of a *Reliefe*, leaving notwithstanding some difference betwixt them; for where the *Saxons* Herriot consisted usually in the payment of some military Weapon, our Relief in those days consisted wholly in the payment of a certain summe of money. And presently after the *Normans* had thus wholly altered the name, and somewhat altered the nature of the *Saxons* Herriot, then upon the parcelling of their Lands unto inferiour Tenants, they invented this new kind of Service, unknown amongst the *Saxons*, and termed it by the name of Herriot-Service. Afterward, upon the Infranchisement and Manumission of certain Villains, these Herriot-Customes were given to the Lords as a continual future gratulation. So
that

that originally, as Britton and Flota well note, they were granted meerly *ex gratia*; but now time hath effected it that they are challenged *ex debito*.

Thus much of Herriots : a word of Relief.

SECT. XXV.

Relief is a certain summe of money which every Free-holder payeth unto his Lord, being at full age at the death of his Ancestor, which in effect

foundeth all one with these words of *Glanvil* :

Heredes majores statim post decessum Antecessorum suorum possunt se tenere in hereditate sua, licet Domini possint Feodum suum cum barede in manus suas capere : ita tamen moderate id fieri debet, ne aliquam disseisinam heredibus faciant; possunt enim heredes, si opus fuerit, violentia Dominorum resistere, dum tamen parati sunt Relitvium & alia retro servitia eis inde

Hotoman.
Comment. de
verbo Feod.
& verbo Relitvium.

facere. With this agreeth the definition of Hotoman; *Relitvium est honorarium quod novus Vassallus introitus causa patrono largitur, quasi*

morte usuati alius, vel alio quo casu Feodum ceciderit, quod jam à n. v. sublevatur. This Relief by the ancient Civil Law was termed *Introitus*; and Vincentius termeth it *Præstationem seu Solu-*

tionem

tionem factam pro confirmatione seu renovatione possessionis, and that very aptly : for indeed Relief is the key which opens the gate to give the Heir free passage to the possession of his Inheritance. *Bracton* giveth this reason why it is called a Relief, *Quia hereditas, quæ jacens fuit per antecessoris decessum, releviatur in manus heredis ; & propter factam Relevationem facienda erit ab herede quodam præstatio quæ dicitur Relevium.* *Skene* fondly imagineth that it taketh his name à *relevando*, in another sense ; for, saith he, Relief is given by the Tenant or Vassal being of perfect age, after the expiring of the Wardship, to the Lord of whom he held his Land by Knight's Service, that is by Ward and Relief ; and by payment thereof he relieves, and, as it were, raiseth up again his Lands, after they were fallen down into his Superiour's hands by reason of Wardship. But these words of *Glanvil* will serve to convince him of errour ; *Tandem vero eodem ad ætatem perveniente, & facta ei hereditatis restitutione, quietus erit à Relivio ratione custodie.* This Relief is twofold ; 1. Relief-Service, 2. Relief-Custome. Relief-Service is that which is paid upon the death of any Free-holder. Relief-Custome is that which is paid

Bracton, lib. 2. cap. 86.

Skene de verb. sign. tit. Relief.

Glanvil, lib. 9. cap. 9.

paid upon the death, change, or alienation of any Free-hold, according to the Custome of the place; in many places half a year's profit, in many places a whole year's profit. And therefore where *Bracton* saith, *Quod dat Domino Relicium qui succedit jure hereditatis, non autem is qui acquirit*; that is to be taken with this caution, *nisi illud etiam consuetudine prestare debet qui acquirit*; These Reliefs are paid as well for Lands holden in Socage, as Lands holden by Knight's Service. For Lands holden in Socage in this manner: If a Tenant in Socage die, his Heir above the age of fourteen, then shall the Heir double the Rent that his Ancestor was wont to pay to the Lord; as if the Tenant holdeth of his Lord by Fealty and five shillings, then shall the Heir double the Rent, and shall pay ten shillings, viz. five shillings in the name of a Relief, over and above the five shillings which he payeth for his Rent. For Lands holden by Knight's Service in this manner: If a Tenant by Knight's Service dieth, his Heir of full 21, if he holdeth by an intire Knights Fee, he payeth five pound, if by half a Knight's Fee, then he payeth fifty shillings, if by a quarter of a Knight's Fee, he payeth 25 shillings; and so proportionably, whoso holdeth more, payeth more, and who holdeth less, payeth less. Yet for the full-

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ler apprehension of the quantity of a Relief, let
 us examine what a Knight's Fee signifieth. A
 Knight's Fee is so much Land as in ancient
 time was accounted a sufficient living for a
 Knight : but whether this was rated according
 to the quantity, or according to the value, *Cau-*
fidici certant, & adhuc sub iudice lis est. Some
 hold according to the quantity, and that, ac-
 cording to the several computations used in
 several places, a Knight's Fee was either more
 or less ; as in the Dutchy of *Lancaster* a
 Knight's Fee contained four Hides of Land,
 every Hide four Carues of Land, every Carue
 four Yard-lands, every Yard thirty Acres;
 and every Knight's Fee 1920 Acres. Accord-
 ing to other computations a Knight's Fee
 contained 680. But according to most compu-
 tations a Knight's Fee contained five Hides
 of Land, every Hide four Yard-lands, every
 Yard-land 24 Acres : according to which com-
 putation a Knight's Fee contained 480 Acres.
 So that according to several computations a
 Knight's Fee was more or less. Others hold
 that a Knight's Fee was measured according to
 the quality, not according to the quantity;
 according to the value, not according to the
 content. And amongst these some hold that
 Land to the value of fifteen pound *per an-*
num made a Knight's Fee ; and therefore

Camden in
sua Britan.

Camden saith that, *Sub Henrico tertio quodammodo coacti fuerunt Equites fieri quotquot libras quindecim ex annu-
terrarum redditibus colligârunt* : and out of *Matthew Paris* he writeth, that anno 1256. *Ex
it Edictum regium, præceptumque est & acclama-
tum per totum regnum, ut qui haberet 16 librata
terra & supradict. armis redimitus tyrocinio do-
naretur, ut Anglia, sicut Italia, militiâ robor-
retur : & qui nollent, vel qui non possent hono-
rem statûs militaris sustinere, pecuniâ se redi-
merent.* Others hold, that *census equestris* was

Smith de
Rep. pag. 31,
32, 33.

forty pound Revenue in Free-hold Land : and of this opinion is *Smith*. Others held, that *census equestris* was twenty pound Revenue : and this opinion is confirmed by many authorities and reasons cited in *Anthon's Case*. 1. By an ancient Treatise, *De modo tenendi Parliamentum tempore Regis Edwardi filii Etheldred* ; where it appeareth *quod Comitatus constabat ex viginti Feodis unius militis, quolibet Feodo computato ad viginti libras. Baronia constabat ex 13 Feodis, ac tertia parte unius Feodi militis. Secundum computationem prædictam, unum Feodum militis constabat ex terris ad valentiam 20. li.* And therefore where the Statute of *Ed. 2. de Militibus* provideth that a Knight's Living shall be measure

by the value of twenty pound *per annum*, this is but an affirmance of the Common Law.

2. This is strengthened by the words of the Statute of *W. 1. cap. 36.* And

*Fitz. Nat.
Brevium,
fol. 62.*

by *Fitzh.* this seemeth something pregnant, for in both these places

Socage-lands to the value of twenty pound *per annum* are put in equipage with a Knight's Fee.

3. In a Writ of Mesne, brought *per Ranulphum de Normanvile petentem versus Luciam de Kyme tenentem*, *P. 3 E. 1.* appeareth, that twelve

Carues of Land made a Knight's Fee, every Carue being in ancient time of the value of five nobles *per annum*; according to which account

a Knight's Fee amounted to twenty pound *per annum*. These are the several opinions touch-

ing the quantity of a Knight's Fee. Embrace of these which shall seem most consonant to rea-

son. For my own part, I think that in the an-

cient time a Knight's Fee was measured accord-

ing to the number of the Acres; but in these

days, according to the value of the Land. The

reason of this alteration is, That though in an-

cient time, as well as in these days, some Lands

were far more fruitful than others; yet the

value of every quantity of Land was certainly

rated, according to the Custome of the places,

and never upon any occasion was the Land in-

creased or decreased: and therefore were they

to examine whether any man had a sufficient Living for a Knight, they would look no farther than to the quantity of his Land; for by the quantity they could presently judge the value. But now the value is not certainly rated in any place, but increaseth and decreaseth upon every occasion; and therefore reason requireth, that in these days a Knight's Fee should be measured according to the value, not according to the quantity of the Land; for, by reason of the different value of the Land, one may be better able to maintain the dignity of a Knight with two hundred Acres in some place, and of some Land, than another with four hundred Acres of other Land. But howsoever it is, whether a Knight's Fee be rated according to the value, or according to the quantity, let it here rest.

Now give me leave to examine at what time and by what Law it was first provided, that for every Knight's Fee the fourth part of a Knight's Revenue should be paid in the name of a Relief, viz. 5 li; for every Baron's Fee, the fourth part of a Baron's Revenue, viz. one hundred marks; for every Earl's Fee, the fourth part of an Earl's Revenue, viz. one hundred pound. Surely Reliefs were paid in this manner before the Statute of *Magna Charta*: and that is somewhat pregnant by this, that by the very

very words of that Statute this Relief is termed *Antiquum Relevium* : and by *Glanvil*, who writ before the making of this Statute, this is somewhat manifest ; for he speaketh to this effect ; *Dicitur rationale Relevium alicujus, juxta consuetudinem Regni, de Feodo unius Militis centum solidos, de Soccagio verò quantum valet census illius Soccagii per annum : de Baronía verò nihil certum statutum est, quia juxta voluntatem & misericordiam Domini Regis solent Baronía capital. de Releviis suis Domino Regi satisfacere.* From whence I gather, that Statute of *Magna Charta* was in part an affirmance of the Common Law, in part an institution of a new Law.

Glanvil, lib. 9. cap. 9.

Touching Relief paid by Knights, it was but an affirmance of the Common Law, because they were certain before the Statute. Touching Reliefs paid by Barons, it was an institution of a new Law, because they were before uncertain. And the reason why Dukes and Vicounts are not mentioned in this Statute, as well as Earls, Barons, and Knights, is this ; because when that Statute was made, there was neither Duke, Marquess or Vicount in *England*. The first Duke that ever was in *England* since the Conquest, was the black Prince, eldest Son to *Ed. the 3.* The first Marquess that ever was in *England* was *Robert Earl of Oxford*, created

by R. 2. And the first Vicount that ever was in England, *Dominus de Bello monte*, created by Hen. 6.

But though at the making of this Statute these Dignities were unknown, yet they are comprehended under the equity of the Statute, and according to their several Dignities shall pay Relief unto the King, a Duke two hundred pounds, a Marquess two hundred marks, and so ratably and proportionably. But to conclude, let us compare Herriots and Reliefs together, and observe in what they differ.

1. They differ in this, that a Herriot lieth in Prender, and a Relief in Render. 2. In this, that a Herriot is paid in the name of a Tenant deceased; but a Relief in the name of an Heir who is become Tenant. 3. In this, that Herriots are paid by Copy-holders as well as Free-holders; but Relief by Free-holders only. 4. In this, that Herriots are ever due upon a special Reservation, or upon some particular Custome; but Reliefs are incident to the Fee, and are due without Reservation or Custome, contrary to the opinion of *Vincennus*, who holdeth a Relief *extrinsecam fore praestationem, & non inesse Feodo*.

Thus much touching Reliefs: a word touching Amerciaments.

S E C T. XXVI.

A *Merciament* is a Pecuniary punishment for any offence committed against the Lord of any Manor; or (as some more at large define it) it is a certain sum of money imposed upon the Tenant by the Steward by Oath, and presentment of the Homage, for the breach of any by-Law made either for the profit of the whole Kingdom, or for the benefit of the little Commonwealth among themselves, or for default of doing Suit, or for other misdemeanors punishable by the same Court, infinite in number and quality. And this word *Amerciament* taketh his name from being in the Lord's mercy, to be punished more or less at his will and pleasure; and it differeth from a Fine in divers respects.

1. In that whosoever is fined may lawfully be imprisoned, but whosoever is amerced cannot. 2. In this, that *Amerciaments* are incident unto Court-Barons as well as unto Court-Leets; and Fines are never incident to any Court-Barons, but to Court-Leets onely, or other Courts of Record. 3. That *Amerciaments* are incident unto every Manor whatsoever; but Fines are incident unto some few Manors onely. The reason of this difference

rence is partly grounded upon the former difference : for sithence Amerciaments are incident unto every Court-Baron, and Court-Barons are incident unto every Manor ; *sequitur ex consequente*, that unto every Manor Amerciaments are incident : but *ex adverso*, Fines being incident unto Court-Leets only, and those Court-Leets being in some few Manors only, not in every Manor expresly ; *sequitur*, that Fines are not incident unto every Manor, but unto some few Manors only. 4. In this, that Amerciaments are afferable *per pares, per sacramentum proborum & legalium hominum de vicineto, qui, secundum modum delicti, majori vel minori amerciamento delinquentem mulctare possunt* : but Fines are never afferable in this kind ; for look what Fine soever the Court imposeth upon the Delinquent, that bindeth sufficiently, without farther Afferance. Give me but leave to ask two questions. 1. When had this Afferance its first conception or creation ? 2. How may Amerciaments in Court-Leets be discerned and distinguished from Fines imposed in the same Court, since they are both pecuniary punishments for offences committed ? Touching the first question, I think this Law of Afferance was before the Statute of *Magna Charta* ; for *Glanvil* thus speaketh of it ; *Est autem* Mife-

*Glanv. lib. 1.
cap. 11.*

*Misericordia Domini Regis, quo quis per jaramen-
tum legalium hominum de vicineto eatenus amer-
ciandus est, nè aliquid de suo honorabili continen-
amittat :* and therefore by this appeareth, that
this Statute of *Magna Charta* was but an affir-
mance of the Common Law in this point of
Afferance. Touching the second question,
know that 'tis not in the power of the Court
to impose a Fine or an Amerciament at their
election for any offence committed, but still
the quality of the punishment must necessarily
sute with the quality of the offence : from the
several natures of offences committed, arise
the several names of punishments inflicted.
The offences in respect of the place are two-
fold, and in respect of the persons twofold. In
respect of the Place, 1. Offences committed
extra Curiam, of which the Steward by no com-
mon possibility can have cognizance without
the presentment of the Homage ; and therefore
the power of presenting them, and imposing
punishments for them, belongeth unto the Ju-
rors of the Leet, and not unto the Steward : and
these punishments thus imposed are termed *A-
merciaments*. 2. Offences committed *in Curia*,
of which the Steward can take sufficient notice,
without the helping hand of the Homage ; and
as therefore the punishments of these offences
belong unto the Steward, not unto the Jurors :
and

and these punishments thus imposed are termed *Fines*. Thus in respect of the Place offences are twofold. In respect of the Person they are likewise twofold. 1. Offences committed by private persons. 2. Offences committed by publick Officers and Ministers of the Court, in the administration of their office. Punishments imposed for offences of the former rank are termed *Amerciaments*, of the latter rank *Fines*; the one afforable *per pares*, the other not. And the reason why the Statute of *Magna Charta* in this point of Afferance extendeth not unto

Co. 8. Greif-
leg's Case.

any offences committed in Court by private Persons or publick Officers, neither unto any offences committed *extra Curiam*, by publick Officers in administration of their Office, is this, Because though the words of the Statute are generally extending unto all offences whatsoever; yet the intent of the Statute-makers was not to make the Jurors Afferors in *omnibus delictis mulctandis, sed in iis tantummodo puniendis quorum certam possint habere notitiam & intelligentiam*, as

Fleta, lib. 1.
cap. 98.

Fleta speaketh. And therefore sithence the Steward hath more certain notice of offences committed in *Curia*, by what persons soever, than the Jurors

rors have, and can better judge and discern of the natures and qualities of offences committed *extra Curiam* by publick Officers than Jurors can; therefore surely the intent of this Statute was, to leave the punishment of these offences to the discretion of the Steward, and not the Afferance of the Homage.

Thus much concerning Amerciaments: a word concerning Forfeitures.

SECT. XXVII.

Forfeiture cometh of the French word *Forfait*, *Scelus*; *quia scelerum & delictorum perpetratio est forisfacturarum causa & origo*. In our Language it signifieth the effect of transgressing, rather than the transgression it self; I mean, it signifieth the penalty for the offence committed, rather than the act it self whereby the offence it self is perpetrated: and it extendeth both unto Lands and unto Goods; unto Lands, both Copy hold and Free-hold.

Touching the causes from whence springeth the Forfeiture of Copy-hold-Lands, I shall have occasion to speak more liberally in another place, and therefore I will silently pass them over, speaking some few words touch-

touching the causes from whence Forfeitures of Free-hold-Land arise.

The causes are many, amongst the which I have observed, 1. That if any Free-holder alieneth his Land in Mortmain, he forfeiteth his Free-hold. 2. If a Free-holder ceaseth for the space of two whole years to perform such Services, or to pay such Rents, as he is tied unto by his Tenure, and hath not upon his Land sufficient Goods or Chattels to be distrained, he forfeiteth his Free-hold. 3. If any Free-holder infringeth any condition whereunto he is tied, he forfeiteth his Free-hold.

Touching the causes from whence grow the Forfeitures of Goods, they are likewise in number many; and from the several causes of forfeiting Goods arise several names of Goods forfeited. 1. If a Felon stealeth Goods, and upon pursuit made waiveth these Goods, and leaveth them in any part of the Manor, and be not attached upon the fresh suit of the Owner; then are these Goods forfeited to the Lord, and are termed *Waives*. 2. If any Beasts are found wandering in any place, and be proclaimed in three Market-Towns adjoyning, and are not claimed by the Owner in a year and a day; then are the Beasts forfeited to the Lord who hath such a Liberty, and are termed *E-*

strays

strays. 3. If any suffer Shipwreck upon the Seas, and through the violence of the Waves Goods are cast upon the Shore, and, being seised by the Bailiff, are not claimed within a year and a day after the Seisure; then are these Goods forfeited to the Lord who hath that Franchise, and are termed *Wrecks*. 4. If one come to a violent end without the fault of any reasonable creature, then immediately that thing which is the cause of that untimely death becometh forfeited unto the Lord; and it is termed a *Deodand*, as this old Verse testifieth, *Omnia quæ movent ad mortem sunt Deodanda*: as if a Horse striketh his Keeper, and killeth him; or if a man driveth his Cart, and, seeking to redress it, falleth, and the Cart-wheel, running over him, presseth him to death; or if one, felling a Tree, giveth warning to comers by to look to themselves, and, notwithstanding warning given, some body is slain by the fall of the Tree; the Horse in the first case, the Cart and the Horses in the second case, and the Tree in the third case, are forfeited to the Lord as *Deodands*. Many other sorts of forfeited Goods I might adde unto this, but I will forbear to enumerate any more in this kind, and to speak more largely of these which I have already enumerated, for three special reasons.

1. Because

1. Because they are Duties accruing unto the Lord not meerly from the Tenants, nor solely by the act of the Tenants, but most commonly from Strangers, and by the sole act of Strangers; and therefore I confesse are not aptly ranked under the name of Services.

2. Because a perfect Manor may well subsist without their assistance, since they add nothing to the perfection of the essence of a Manor.

3. Because they are not incident unto every Manor, but unto such Manors onely as can challenge them either by special Prescription, or by Patent from the King: for primarily and originally these Forfeitures of Goods belonged to the King, for these reasons especially; because what Goods soever have no certain owner known to challenge interest in them, as Waives, Estrays, and Wrecks, the property of such Goods belongs unto the King *virtute Prærogative*: and thus much *Bracton* intimateth, when he saith, *Sunt aliquæ quedam quæ in nullius bonis esse dicuntur, sicut Wreccum maris, &c. & aliæ res quæ Dominus non habent, sicut animalia vagantia, & quæ sunt Domini Regis propter privilegium marium.* The reason why Deodands are forfeited to the King is this:

Deodands were originally invented for the pacifying of God's wrath, and the appeasing

of God's anger; and these things thus forfeited were, according to the true intendment of the Law, to be sold, and money distributed among the poor; and therefore upon whom could the Law have better conferred this benefit, or rather imposed this charge, than upon the King, who representeth God's person upon the earth, and who the Law presumeth will deal more justly and truly, nay, more liberally and bountifully with the poor in this kind, than any inferiour Lord, who peradventure out of his uncharitableness, peradventure out of want, will be so far from adding any thing to that which is due, that he will rather unjustly subtract part, or unconscionably detain the whole?

Since therefore these Forfeitures of Goods neither adde to the perfection of a Manor, neither are incident unto every Manor, to spend any farther time about a Subject so superfluous would ill beseem this small Treatise, wherein the scope and end I aim at is this, onely to present to your view what things soever are necessarily requisite to the essence of every Manor, and what Services soever are incident unto every Manor.

And thus much concerning Forfeitures: a word concerning Escheats.

SECT.

SECT. XXVIII.

E*Scheats* cometh of the *French* word *Escheat*, *excidere*, and are termed *Exca-*
dentia, which imports Lands fallen into the
 Lord's hand for want of Heir general or spe-
 cial to inherit them. But before the Lord
 enter into an Escheat in this kind, the Homage
 ought to present it, and being presented, Pro-
 clamations ought to be made to give notice to
 the World, that if any man come in and justly
 claim, he shall be received: the Homage then
 finding it clear, intitule the Lord as to Lands
 Escheated.

Besides this ordinary sort of Escheat, there
 is another sort of Escheat; and that is, where
 any Free-holder committeth Felony, and is
 attainted, the King shall have *Annum, diem &*
vastum; and then it cometh unto the Lord as
 an Escheat.

Thus much concerning the nature of Services
 in general, and there are so many particular
 Services *in individuo*, that I might insist in
 millions more; but fear of incurring the cen-
 sure of being over-tedious, restraineth the for-
 wardness of my hand: yet sithence occasion is
 so favourable to me, I will presume so much
 upon your patience, as to lay open the sever-

ral remedies which the Law hath provided for the obtaining of those several Services before mentioned, if perchance they be wrongfully deceived by the Tenants; and, for method sake, I will begin with *Corporal Services*.

S E C T. XXIX.

IF any Free-holder refuseth to do Homage or Fealty, which are Corporal Services of Submission; or to mend High-ways, repair decayed Bridges, or *similia*, which are Corporal Services tending to the publick Profit of the Commonweal; or to discharge the office of a Carver, a Butler, a Brewer, or such like, or to pale the Lord's Park, to tile the Lord's Houses, or to thatch his Barns, or *similia*, which are Corporal Services tending to the private Profit of the Lord; If, I say, any Free-holder refuseth to do any of these Services, being bound unto them by his Tenure, then may the Lord lawfully distrain his Cattel or his Goods, and detain them untill satisfaction be given by performing such Services as the Law doth require. And the same remedy which the Law hath provided for Corporal Services, is likewise provided for *Annual Services*.

SECT. XXX.

FOR if any Free-holder refuseth to pay any Annual Rent, or to discharge any annual Payment, according to his Tenure; then may the Lord lawfully distrain, and, in a Replevin brought by the Tenant, may avow the Distress, and justify the taking. But no Action of Debt will lie for these Annual Services, no more than for Corporal Services: for it is a ground in Law, that as long as the Rent continueth of any Estate or Frank-tenement, no Action of Debt lieth for the Arrerages of the Rent, nor for any other Service whatsoever. And therefore if a Lease for life be made reserving Rent, the Lessor cannot maintain an Action of Debt for the Arrerages of this Rent as long as the Estate continueth; but presently upon the determination of the Estate an Action of Debt lieth for the Arrerages of the Rent incurred before the time of the determination. But what? hath the Law provided no other remedy for those Annual Services than Distress? Surely no, before Seisin none; but after Seisin once gained, 'tis at his election, either to distrain, or to bring an Assize.

And thus much touching Remedies for Corporal and Annual Services.

SECT.

S E C T. XXXI.

Accidental Services are gotten by many differing means. 1. By Seisure onely, as the Wardship of the Heir's Body, together with the Waives, Estrays, Wrecks, Deodands, and such like Forfeitures of Goods. 2. By the Entry onely, as the Wardship of the Heir's Land, together with Lands forfeited to the Lord, either upon the breach of some Condition, or upon an Alienation in Mortmain. 3. By Seisure or Distress, as Herriot-Services, contrary to the opinion of some, who held them gainable by distress onely, and not by Seisure. 4. By Action, as Herriot-Customes; for upon the Eloignement of the best Beast, the Lord may maintain an Action of Detinue against the Heir. 5. By Entry or Action, as Lands forfeited to the Lord by the cessing of his Tenant, or Escheat accruing unto the Lord, either upon the Attainder or death of his Tenant without Heir: in the first, the Lord may enter or maintain a Writ of *Cessavit*; in the second, the Lord may enter or maintain a Writ of Escheat. 6. By Distress or Action, as Reliefs and Amerciaments. For Reliefs the Lord may distrain, or bring an Action of Debt. Neither doth this any whit impugn the for-

mer ground, that as long as the Rent doth continue, &c. because indeed Relief is the fruit and approvement of Services, rather than any Service. And for Amerciaments the Lord may either distrain or bring an Action of Debt. Other remedy the Law hath provided against Strangers for detaining of these Duties from the Lord, as to insist in one: If a Stranger will detain the Ward's Body or the Ward's Land from the right Lord, a Writ *De recto de custodia terra & heredis* lieth against the Stranger. But to meddle with Strangers were to wander out of the little Commonweal; and therefore to keep my self within my bounds and limits, I will here conclude touching the two Material Causes of a Manor, *viz.* Demesnes and Services. A word touching the Efficient Cause of a Manor, and then I will end the Definition of a Manor.

The Efficient Cause of a Manor is expressed in these words, *of long continuance*: for indeed Time is the Mother, or rather the Nurse, of Manors; Time is the Soul that giveth life unto every Manor, without which a Manor decayeth and dieth: for 'tis not the two Material Causes of a Manor, but the Efficient Cause, (knitting and uniting together those two Material Causes) that maketh a Manor. Hence it is that the King himself cannot create

ate a perfect Manor at this day; for such things as receive their perfection by the continuance of time come not within the compass of a King's Prerogative: and therefore the King cannot grant Free-hold to hold by Copy, neither can the King create any new Custome, nor doe any thing that amounteth to the creation of a new Custome. And therefore a Composition made between the King and his Tenant, where he hath Herriot-Custome, to pay 10 li. in lieu thereof every time it fall-eth, is no binding Composition: for this amounteth to the creation of a new Custome.

Et hac omnia & similia sunt temporum, non regum seu principum, opera: which fully verifieth the old saying, *Plus valet vulgaris consuetudo quam regalis concessio.* This is the sole cause why the King cannot create a perfect Manor at this day: and this is the chief cause why a common person cannot create a perfect Manor, but not the sole cause; for there is this cause farther, A perfect Manor cannot subsist without a perfect Tenure, between very Lord and very Tenant; but a common person cannot create a perfect Tenure, and consequently cannot create a perfect Manor. Before the Stat. of *Quia emptores terrarum*, if any Tenant seised of Land in Fee-simple had infeoffed a Stranger, he might have reserved what Services he thought fit;

or had he reserved no Services, yet the Law would have implied a perfect Tenure between the Feoffor and the Feoffee, for the Feoffee was to hold of the Feoffor by the same Services that the Feoffor held over of his Lord paramount: but since this Statute, if a Tenant seised of Land in Fee infeoffeth a Stranger, neither by the expresse Reservation of the feoffor, nor by the implied Reservation of the Law, can there be a perfect Tenure created at this day between the Feoffor and the Feoffee; for the Feoffee shall hold immediately of the Lord paramount, not of the Feoffor. And farther, as the King can do nothing which amounteth to the creation of a new Custom; so a common person can do nothing which amounteth to the creation of a new Tenure. And therefore if there be Lord and Tenant by 10. s. Rent, and the Lord will confirm the Estate of a Tenant *Tenend.* by a Hawk, a pair of Gilt spurs, a Rose, or *similia*, this is a void confirmation: otherwise had it been if the Lord had confirmed the estate of the Tenant *Tenendum per 5. s.* that had been a good confirmation; because it tendeth onely to the abridgement of an old Tenure, and not to the creation of a new. And as it is with a Confirmation, so it is with a Composition. Upon the reason of this ground it is, that if the Lord

of a Manor purchase forein Land, lying without the Precincts and bounds of the Manor, he cannot annex this unto the Manor; though the Tenants be willing to do their Services; for this amounteth to the creation of a new Tenure, which cannot be effected at this day. And therefore if a man having two Manors, the Lord would willingly have the Tenants of both these Manors to do their Suit and Service to one Court, this is but lost labour in the Lord to practise any such Union; for notwithstanding this Union they will be still two in nature, howsoever the Lord covet to make them one in name; and the one Manor hath no warrant to call the Tenants to the other Manor, but every act done in the one, to punish the offenders in the other, is traversable. Yet if the Tenants will voluntarily submit themselves to such an Innovation, and the same be continued without contradiction, time may make this Union perfect, and of two distinct Manors in nature make one in name and use. And such Manors peradventure there are thus united by the consent of the Tenants and continuance of time, but the Lords power of it self is not sufficient to make any such Union, *causa quâ supra*. But if one Manor holdeth of another by way of Escheat, these two Manors may be united together, *for et*

enim est dispositio Legis quàm hominis. But in this, that I exclude common persons from being able to create a Tenure, I may seem to impugn many Authorities which hold at this day that a Tenure may be created by a common person. For to clear this colour of contradiction, know that Tenures are twofold, First, imperfect: as where a man maketh a Lease for years or for life, or a Gift in tail; here is an imperfect Tenure between the Lessor and the Lessee, the Donor and the Donee; and this imperfect Tenure I confess may be created by a common person at this day. Secondly, perfect, between very Lord and very Tenant in Fee: and such a Tenure a common person could never create since the Statute of *Quia emptores terrarum.* And consequently a common person cannot create a perfect Manor sithence, for without a perfect Tenure a perfect Manor cannot subsist.

Thus much touching the definition of a Manor, thus much, I say, touching the two Material Causes, together with the Efficient Cause. A word of another Cause of a Manor, which appeareth not in the Definition so manifestly as the other Causes do: this is a Cause which among the Logicians is termed *Causa sine qua non*, and that is a Court-Baron; for indeed that is the chief prop and pillar of a Manor,

Manor, which no sooner faileth, but the Manor falleth to the ground. If we labour to search out the antiquity of these Court-Barons, we shall finde them as ancient as Manors themselves. For when the ancient Kings of this Realm, who had all the Lands of *England* in Demesne, did confer great quantities of Land upon some great Personages, with liberty to parcell the Land out to other inferiour Tenants, reserving such Duties and Services as they thought convenient, and to keep Courts where they might redress Misdemeanours within their precincts, punish Offences committed by their Tenants, and decide and debate Controversies arising within their Jurisdiction; these Courts were termed Court-Barons, because in ancient time such personages were called Barons, and came to the Parliament, and sat in the upper House: but when time had wrought such an alteration, that Manors fell into the hands of mean men, and such as were far unworthy of so high a calling; then it grew to a custome, that none but such as the King would should come to the Parliament, such as the King for their extraordinary wisdom or quality thought good to call by Writ, which

*Vide Lamb.
in his expli-
cation of
Saxon
words, ver.
bo Thamus.
Bacon in his
Elements of
the Law, fol.
41, 42, 43.*

which Writ ran, *hac vice tantum*. Yet though Lords of Manors lost their names of Barons, and were deprived of that dignity which was inherent to their names, yet their Courts retain still the name of Court-Barons, because they were originally erected for such personages as were Barons: neither hath time been so injurious as to eradicate the whole memory of their ancient Dignity, in their name there is stamps left of their Nobility, for they are still intituled by the name of *Lords*. These Courts differ from Court-Leets in divers respects. 1. In this, that Court-Barons by the Law may be kept once every three weeks, or (as some think) as often as it shall please the Lord; though for the better ease both of Lords and Tenants they are kept but very seldome;

Magna Charta,
2^a, c. 35. 31
E 3. ca. 15.

but a Court-Leet by the Statute of *Magna Charta* is to be kept but twice every year; one time within a moneth after *Easter*, and another time within a moneth after *Michaelm*.

2. In this, that Court-Barons may be kept in any place within the Manor, (contrary to the opinion of *Brian*;) but a Court-Leet by the Statute of *Magna Charta* is to be kept in *certo loco ac determinato* within the Precinct.

3. In this, that originally Court-Barons belonged unto inferiour Lords of Manors; but

Court-

Court-Leets originally belonged unto the King.

4. In this, that Court-Barons are incident unto every Manor, so that every Lord of a Manor may keep a Court Baron; but few have Leets: for inferiour Lords of Manors cannot keep Court-Leets without special Prescription, or some special Patent from the King. 5. In this, that in Court-Barons the Suitors are Judges; but in Court-Leets the Steward is Judge. 6. In this, that in Court-Barons the Jury consisteth oftentimes of less than twelve, in Court-Leets never. The reason of that is, because none are impanelled upon the Jury in Court-Barons but Free-holders of the same Manor, but in Court-Leets Strangers are oftentimes impanelled. 7. In this, that Court-Barons cannot subsist without two Suitors *ad minimum*; but Court-Leets can well subsist without any Suitors. 8. In this, that Court-Barons enquire of no Offences committed against the King; but Court-Leets enquire of all Offences, under high Treason, committed against the Crown and Dignity of the King. In many other respects they differ: As that a Writ of Errour lieth upon a Judgment given in a Court-Leet, but not in a Court-Baron. So in a Court-Leet a *Capias* lieth; but in a Court-Baron, in stead of a *Capias*, is used an Attachment by Goods. So in a Court-Baron

ron an Action of Debt lieth for the Lord himself, because the Suitors are Judges; but in a Court-Leet the Lord cannot maintain any Action for himself, because the Steward is Judge. But omitting these with many more, I come to the Etymology of a Manor. Some derive the word Manor à *manendo*: and then it taketh his name either from the Manor-house, which the Lord maketh his Dwelling-place; or else à *manendo*, *quia Dominus ac Tenentes in Manerii sui circuitu cohabitant ac manent*. Some think 'tis termed Manor from manuring the ground: and then it taketh its name either from the Lord's Demesnes, which the Tenants are bound to manure; or else from the Land remaining in the Tenant's hands, which are likewise tilled and manured. Others are of opinion that it is derived of the *French* word *mesner*, which signifieth to govern or guide, because the Lord of a Manor hath the guiding and directing of all his Tenants within the limits of his Jurisdiction. And this I hold the most probable Etymologie. and most agreeing with the nature of a Manor: for a Manor in these days signifieth the Jurisdiction and Royalty incorporate, rather than the Land or Site.

Thus much touching the Etymologie. A word touching the Division of a Manor. A Ma-

nor

nor is two-fold, 1. *Re & nomine*; 2. *Nomine tantum*. *Re & nomine*, as where the two Material Causes of a Manor, the Efficient Cause, and *Causa sine qua non*, do meet and joyn together. *Nomine tantum*, as where any of these Causes is wanting. As to insist in the two Material Causes: If the Lord will transfer over to some Stranger the Services of all his Tenants, and reserve unto himself the Demesnes; or if he will pass away the Demesnes, and reserve the Services; in both cases the Lord peradventure hath a Manor *nomine*, but not otherwise, because in the one case he wanteth Demesnes, in the other Services. So if a Manor descendeth to Copartners, and they make Partition, and the intire Demesnes are allotted to the one, and the intire Services to the other; the Manor is now in suspence, for neither of them hath any Manor but in name onely: but if part of the Demesnes and part of the Services be allotted to each one, then have they each of them a Manor, not *nomine tantum*, but *re & nomine*. To insist in the Efficient Cause: If the King at this day will grant a great quantity of Land to any Subject, injoyning him certain Duties and Services, and withall wil- leth that this should bear the name of a Manor; howsoever this may chance to gain the

the name of a Manor, yet it will not be a Manor in the estimation of the Law. To insist in this Cause, *sine qua non*: If the King grant away a Manor to *J S*, excepting the Courts and Perquisites, the Grantee hath a Manor in name onely. So if all the Free-holders die but one, if the Lord purchase all the Free-holders Land, or pass away the Services of the Free-holders, or release unto his Free-holders all their Services; notwithstanding the Demesnes and the Services of the Copy-holders, yet the Lord hath but a Manor in name, because the Free-holders are wanting, which are the maintainers and upholders of the Court-Baron, and consequently a necessary help to the perfection of a Manor. So if the Lord granteth away the Inheritance of all his Copy-holders, or demiseth all his Lands granted by Copy to another for 2000 years; the Grantee in the one case, and the Lessee in the other, have a kind of Seigniority in gross, and may keep a Customary Court, where the Steward shall be Judge, and shall take Surrenders, and make Admittances: and this in the eye of the World is a Manor, though in the judgment of the Law it cometh far short of one.

Thus much touching the Division of a Manor. I might here handle many collateral Ju-

risci-

jurisdictions appropriated to Lords of Manors; as that of erecting Dove-houses, of proving the Wills of their Tenants deceased within their Precincts in many places, of inclosing Common, leaving sufficient besides for the other Commoners, with many the like: *Sed hac lubens libensque omitto.* And thus closing up this part of my Treatise touching Manors, I come to the other part, touching Copy-hold.

SECT. XXXII.

I Need not stand to discourse at large the Antiquity of the Copy-holders; for if you cast your eye back to that is past, you shall easily perceive that Copy-holders, though very meanly descended, yet they come of an ancient house: and therefore if in this point you desire satisfaction, call to mind what I have already spoken, and (if I mistake not) it will sufficiently answer your desire. Give me leave to go a step farther, and to examine the several names which Copy-holders have had from time to time allotted unto them, together with their proper Etymologies. Immediately upon the Conquest they were known by the name of Villains or Tenants in Villainage: so termed by the Normans, either in respect of the Imbe-

Imbecillity and Incertainty of their Estates, which were grounded upon a very weak foundation, wholly depending upon the will of the Lord, and oustable at his pleasure; or in respect of their Services, which favoured of nothing but Slavery, whether they were *certa ac determinata*, Or *incerta ac indeterminata, ubi sciri non poterat vespere, quale Servitium facere deberent in crastino*, as Bracton speaketh, (contrary to the opinion of some, who hold that the Service of Copy-holders was never subject to such incertainties;) or lastly, in respect of the persons, who for the most part were Villains, howsoever some Freemen did sometimes hold Land by the same Tenure. The least of these three reasons is sufficient to make them deserve that name; but joyn them together, and then he that judgeth most favourably of them will think this the truest title that could be bestowed upon them. Yet some there are who, in behalf of these Tenants, stick not to maintain (howsoever in respect of their Estates they may not unfitly be termed Tenants in Villainage, being in such strange subjection to their Lords) that neither in respect of their Services nor their persons they could merit that name; especially if we take the word in that reproachfull sense that it is usually taken in

at this hour. But if we account those Villain-
 Services which any way touch Husbandry, as
 Plowing, Sowing, Reaping, and suchlike;
 and these men Villains who exercise them-
 selves in any point of Husbandry; then they
 agree that their Tenure could in no wise have
 an apter term than this: for they confess that
 these Copy-holders were for the most part
Rustici & Pagani, and their services wholly
ad Rusticitatem tendentia. Howsoever I dare
 not wholly disallow of this opinion, yet I can-
 not altogether approve of it. For I admit,
 and in a manner consent, that amongst the
Normans these Services, which we call Ru-
 ral Services, were called Villain-Services,
 and those men whom we term Husbandmen
 were termed Villains, and do hold that the
 Copy-hold-Services in those days were more
 slavish than rural, and they themselves ra-
 ther Bondmen than Husbandmen; otherwise
 we should make their Tenure differ in no-
 thing from ancient Socage-Tenure, which I
 assure my self is otherwise: for though Socage-
 gers were Rusticks, and in that sense Villains;
 yet their Tenure was never noted by the
 name of a Tenure in Villainage, till in many
 places their Corporal Services began to be
 turned into Money: then, for distinction sake,
 the one began to be called *liberum Socagi-*

um, the other villanum Socagium. But long before these Copy-holders were termed Villains, and therefore without all doubt their Tenure was in baseness and slavery a degree above the ancient Socage-Tenure; till at length the Lords of Manors, being framed to more civility, began then to think it a most uncharitable part to keep their poor Tenants in that Bondage; therefore out of the remorse of their own Consciences, and the compassion of their Tenants miseries, by little and little they enfranchised them, and released them of their heavier burthens, reserving Services of another nature in lieu of them. Thus having shaken off the fetters of their Bondage, they were presently freed of their opprobrious name, and had other new gentle styles and titles conferred upon them: they were everywhere then called *Tenants by Copy of Court-Roll*, or *Tenants at will*, according to the Custom of the Manor: which styles import unto us three things; 1. *Nomen*; 2. *Originem*; 3. *Titulum*. 1. His Name is *Tenant by Copy of Court-Roll*; for he is not called *Tenant by Court-Roll*, but by *Copy of Court-Roll*; and this is the sole Tenant in Law who holdeth by Copy of any Record, Charter, Deed, or any other thing. 2. His Commencement is at the will of the Lord. For these

these Tenants in their birth, as well as the Customary Tenants upon the Borders of *Scotland*, who have the name of Tenants, were meer Tenants at will: and though they keep the Customes inviolated; yet the Lord might, sans controll, eject them. Neither was their Estate hereditary in the beginning, as appeareth by *Britton*: for if they died, their Estate was presently determined; as in case of a Tenant at will at Common Law: and in some points, to this present hour, the Law regardeth them no more than a meer Tenant at will; for the Free-hold at the Common Law resteth not in them, but in their Lords, unless it be in Copy-holds of Frank-tenure, which are most usuall in Ancient demesne. Though sometimes out of Ancient demesne we shall meet with the like sort of Copy-holds; as in *Northampton-shire* there are Tenants which hold by Copy of Court-Roll, and have no other Evidence, and yet hold not at the will of the Lord. These kind of Copy-holders have the Frank-tenure in them, and it is not in their Lords, as in case of Copy-holds in base Tenure. Besides, Copy-holders shall not attourne upon the granting away of the Manor, no more than Tenants at will at the Common Law; and their Estate can be no Infranchisement to a

Britton,
cap. 66.

Villain, no more than a meer Estate at will. And farther, their Lands are parcell of the Lord's Demeines, as well as Lands granted away at will, according to the course of the Common Law: and for his Title and Assurance, that is according to the Custome of the Manor. For the Custome of the Manor hath so established and so fixed them in their Land, that if they do their Services and Duties, and perform the Customes of the Manor, they are as well inheritable, according to the Custome, as he that hath a Frank-Tenement at the Common Law. And sithence Custome is the life and soul of Copy-hold-Estates, and whatsoever shall or can be spoken touching Copy-holds ariseth from this Head and from this Fountain; give me leave in the second place to speak something concerning them.

SECT. XXXIII.

C*ustomes* are defined to be a Law or Right not written, which being established by long Use and the Consent of our Ancestors; hath been and is daily practised.

*Customes,
Prescription
and Usage,
how they
differ.*

Customes, Prescription and Usage,
howsoever there be correspon-
dency amongst them, and depen-
dency

dency one on the other, and in common speech one of them is taken for another; yet they are three distinct things. Custom and Prescription differ in this. 1. Custom cannot have any commencement since the memory of man, but a Prescription may, both by the Common Law and the Civil: and therefore where the Statute 1 Hen. 8. saith that all Actions popular must be brought within three years after the offence committed; whosoever offendeth against this Statute, and doth escape uncalled-for three years, he may be justly said to prescribe an Immunity against any such Action. 2. A Custom toucheth many men in general; Prescription this or that man in particular: and that is the reason why Prescription is personal, and is always made in the name of some person certain, and his Ancestors, or those whose Estate he hath; but a Custom, having no person certain in whose name to prescribe, is therefore called and alledged after this manner, In such a Borough, in such a Manor, there is this or that Custom. And for Usage, that is the efficient cause, or rather the life, of both; for Custom and Prescription lose their being, if Usage fail. Should I goe about to make a Catalogue of several Customs, I should, with *Sisyphus, saxum volvere*, undertake an endless piece of work; therefore I will forbear,

since the relation would be an argument of great curiosity, and a task of great difficulty. I will only set down a brief distinction of Customes, and leave the particulars to your own observation. Customes are either general, or particular. General, which are part of the Common Law, being currant through the whole Commonwealth, and used in every County and City, every Town, and every Manor. Particular, which are confined to shorter bounds and limits, and have not such choice of fields to walk in as general Customes have. These particular Customes are of two sorts; either disallowing what general Customes do allow, or allowing what general Customes do disallow. As for example sake, By the general Customes of Manors it is in the Copy-holder's power to sell to whom he pleaseth; but by a particular Custome used in some places, the Copy-holder, before he can inforce his Lord to admit any one to his Copy-hold, is to make a profer to the next of the bloud, or to the next of his Neighbours *ab oriente Solis*, who, giving as much as the party to whom the Surrender was made, should have it: so on the other side, by the general Custome of Manors, the passing away of Copy-hold-Land by Deed for more than for one year without Licence is not warrant-
ed;

ed; yet some particular Customes in some Manors doe it. So by the general Customes of manors, Presentments or any other act done in the Leet, after the Moneth expired, contrary to the Statute of *Magna Carta* and 31 E. 3. are void; yet by some particular Customes such acts are good. And so in millions of the like, as in the sequel of this Discourse shall be made manifest. And therefore, not to insist any longer in dilucidating this point, let us in few words learn the way how to examine the validity of a Custome. For our direction in this business, we shall doe well to observe these six Rules, which will serve us for exact trial. 1. Customes and Prescriptions ought to be reasonable; and therefore a Custome that no Tenant of the Manor shall put in his Cattell to use his Common in *Campis seminatis*, after the Corn severed, untill the Lord have put in his Cattell, is a void Custome, because unreasonable: for peradventure the Lord will never put in his Cattell, and then the Tenants shall lose their profits. So if the Lord will prescribe that he hath such a Custome within his Manor, that if any man's Beasts be taken by him upon his Demesnes Dammage-feasant, that he may detain them untill the Owners of the Beasts give him such recompence for his Harms as he

himself shall request; this is an unreasonable Custome, for no man ought to be his own Judge. 2. Customes and Prescriptions ought to be according to common right: and therefore if the Lord will prescribe to have of every Copy-holder belonging to his Manor for every Court he keepeth a certain sum of money, this is a void Prescription, because it is not according to common Right; for he ought for Justice sake to do it gratis. But if the Lord prescribe to have a certain Fee of his Tenants for keeping an extraordinary Court, which is purchased onely for the benefit of some particular Tenants, to take up their Copy-holds and such like; this is a good Prescription, and according to common Right. 3. They ought to be upon good consideration: and therefore if the Lord will prescribe, that whosoever passeth through the King's High-way which lieth through his Manor should pay him a penny for passing; this Prescription is void, because it is not upon a good consideration. But if he will prescribe to have a peny of every one that passeth over such a Bridge within his Manor, which Bridge the Lord doth use to repair; this is a good Prescription, and upon a good consideration. So if the Lord will prescribe to have a fine at the Marriage of

his

his Copy-holder, in which Manor the Custome doth admit the Husband to be Tenant by the curtesie, or the Feme Tenant in Dower of a Copy-hold; this Prescription is good, and upon a good consideration. But in such Manors where these Estates are not allowed, the Law is otherwise. 4. They ought to be compulsory: and therefore if the Lord will prescribe that every Copy-holder ought to give him so much every moneth to bear his charges in time of War, this Prescriptio is void. But to prescribe they ought to pay so much money for that purpose, is a good Prescription. For a payment is compulsory, but a Gift is arbitrary, at the voluntary liberty of the Giver. 5. They ought to be certain: and therefore if the Lord will prescribe, what whensoever any of his Copy-holders die without Heir, that then another of the Copy-holders shall hold the same Lands for the year following; this Prescription is void, for the incertainty. But if the Lord will prescribe to have of his Copy-holders 2 d. an Acre Rent, and in time of War four pence an Acre; this Prescription is certain enough. 6. They ought to be beneficial to them that alledge the Prescription; and therefore if the Lord prescribeth that the Custome hath always been within the Manor, that what Distresse soever is taken within

within his Manor for any common person's cause is to be impounded for a certain time within his Pound; this is no good Prescription, for the Lord is hereby to receive a charge, and no commodity. But if the Prescription goeth farther, that the Lord should have for every Beast so impounded a certain summe of money, this is a good Prescription. If we desire to be more fully satisfied in the general knowledge of Prescriptions and Customs, we shall find many Maximes which make very materially for this purpose; amongst which I have made choise of these three, as most worthy of your observation.

1. Things gained by matter of Record only cannot be challenged by Prescription; and therefore no Lord of a Manor can prescribe to have Felons Goods, Fugitives Goods, Deodands, and such like; because they cannot be forfeited untill it appear of Record: but Waives, Estrays, Wrecks, and such like, may be challenged by Prescription, because they are gained by Usage without matter of Record. 2. A Custome never extendeth to a thing newly created; and therefore if a Rent be granted out of Gavel-kind-Land, or Land in Borough-*English*, the Rent shall descend according to the course of the Common Law, not according to the Custome. If before the

Statute

Statute 32 Hen. 8. Lands were deviseable in any Borough or City by special Custome, a Rent granted out of these Lands was not deviseable by the same Custome : for what things soever have their beginning since the memory of man, Custome maintains not. If there be a Custome within a Manor, that for every House or Cottage two shillings Fine shall be paid ; if any Tenant within these Liberties maketh two Houses of one, or buildeth a new House, he shall not pay a Fine for any of these new Houses ; for the Custome only extendeth to the old. So if I have Estovers appendant to my House, and I build a new House, I shall not have Estovers for this new-built House upon this ground. It hath been doubted, if a man by Prescription hath course of water to his Fulling-mills, he converting these into Corn-mills, whether by this conversion the Prescription is not destroyed, in regard that these Corn-mills are things newly created : but because the quality of the thing, and not the substance, is altered, therefore this alteration is held insufficient to overthrow the Prescription. For if a man by Prescriptiō hath Estovers to his House, although he alter the Rooms and Chambers in the House, as by making a Parlour where there was a Hall, *vel è converso*, yet the Pre-

Prescription stands still in force : and so by Prescription I have an ancient Window in my Hall, and I convert it into a Parlour, yet my Neighbours upon this change cannot stop my Window, *causâ quâ suprà*. 3. Customes are likewise taken strictly, though not always literally. There is a Custome in London, that Citizens and Free-men may devise in Mortmain : A Citizen that is a Foreigner cannot devise by this Custome. An Infant by the Custome of Gavel-kind, at the age of fifteen, may make a Feoffment : yet he cannot by the Custome make a Will at that age to passe away his Land, to make a Lease and a Release, which amounteth to a Feoffment. If there be any Custome that Copyhold-Lands may be leased by the Lord, *per Supervisorem, vel Deputatum Supervisorem*, this Custome giveth not power to the Lord to authorize any by his last Will and Testament to keep a Court in their own name, and to make Leases *secundum consuetudinem Manerii*. But these Customes have this strict construction, because they tend to the derogation of the Common Law ; yet they are not to be confined to literal interpretation : for if there be a Custome within any Manor, that Copyhold-Lands may be granted *in Feodo simplici*, by the same Custome they

are grantable to one and the Heirs of his body, for life, for years, or any other Estate whatsoever; because, *Cui licet quod majus, non debet quod minus est non licere*. So if there be a Custome that Copy-hold-Lands may be granted for life; by the same Custome they may be granted *durante viduitate*, but not *in universo*; because an Estate during Widowhood is less than an Estate for life. Before the Statute of 32 Hen. 8. Lands in certain Boroughs were devisable by Custome. By the same Custome was *implicite* warranted, authorizing Executors to sell Lands devisable. Now with your patience I will only point at the manner of Pleading of Customes. I finde a four-fold kind of Prescribing.

1. To prescribe in his Predecessors, as in himself, and all those whose Estate he hath.

2. To prescribe generally, not tying his Prescription to place or person: as where a Chief Justice prescribeth, that it hath been used that every Chief Justice may grant Offices; or where a Sergeant prescribeth, *Quod talis habetur consuetudo*, that Sergeants ought to be impleaded by original Writ, and not by Bill.

3. To prescribe in a place certain.

4. To prescribe in the place of another.

The first sort of these Prescriptions a Copy-holder

py-holder cannot use, in regard of the imbecillity of his Estate: for no man can prescribe in that manner but only Tenants in Fee-simple at the Common Law.

The second sort of these may be used sometimes by Copy-holders in the pleading of a general Custome; but in alledging of a particular Custome a Copy-holder is driven to one of the last, and, as occasion serveth, useth sometimes the one, sometimes the other. If he be to claim Common or other profit in the Soil of the Lord, then he cannot prescribe in the name of the Lord; for the Lord cannot prescribe to have Common or other profit in his own Soil: but then the Copy-holder must of necessity prescribe in a place certain, and alledge that within such Manor there is such a Custome, that all the Tenants within that Manor have used to have Common in such a place, parcell of the Manor. But if he be to claim Common or other profit in the Soil of a stranger, then he ought to prescribe in the name of his Lord, saying that the Lord of the Manor, and his Ancestors, and all those whose Estate he hath, were wont to have a Common in such a place for himself and his Tenants at will &c.

SECT. XXIV.

THus much of Customes: I come now home to Copy-holders. And in the third place I hold it the best course to dilate upon the manner and means of granting Copy-holds; wherein I will onely rely upon these five parts.

1. Upon the person of the Grantor.
2. Upon the person of the Grantee.
3. Upon the Grant it self.
4. Upon the Thing granted.
5. Upon the Instruments through whose hands, as through Conduit-pipes, the Lands are *gradatim* conveyed to the Purchasor.

And first of the person of the Grantor. Sometimes the Lord himself is Grantor, sometimes a Copy-holder. In voluntary Grants made by the Lord himself the Law neither respecteth the quality of his Person, nor the quantity of his Estate: For be he an Infant, and so through the tenderness of his age insufficient to dispose of any Land at the Common Law; or *non compos mentis*, an Idiot, or a Lunatick, and so for want of common Reason unable to traffick in the World; or an Out-law in any personal Action, and so excluded from the protection of the Law; or

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an Excommunicate, &c. and so restrained ab
omnium fidelium communione, or at least a
Sacramentorum participatione: notwithstanding
 these infirmities and disabilities, yet he is
 capable enough to make a voluntary Grant by
 Copy. For if a Feme Seignioresse take Bi-
 ron, and they two joyn in a voluntary Grant
 by Copy, this shall ever binde the Feme and
 her Heirs, and yet she is not *sui juris*, but
sub potestate viri; because the Custome of the
 Manor is the chief *basis* upon which stands the
 whole fabrick of the Copy-hold-Estate. And
 therefore what Custome doth confirm to a Co-
 py-holder, the Law will ever allow, and ne-
 ver seek to avoid it in respect of any such im-
 perfection in the Grantors persons; and the
 quality of the Lord's Estate is no more re-
 spected than the quality of his person: for
 if his Interest be lawfull, be his Estate never
 so great or never so little, 'tis not material:
 for be it in Fee, or be it in Tail or Dower, or
 as Tenant by curtesie, for life or for years,
 as Guardian, or as Tenant by Statute, or
 as Tenant by *Elegit*, or at will; the lease
 of these Estates is a sufficient warrant to
 the Lord to grant any Copy-hold escheated
 unto him, for as long time as the Custome
 doth allow, the ancient Rents and Services
 being truly reserved: and these Grants shall
 ever

ever bind them that have the Inheritance of Frank-tenement of the Manor, as well as Offices granted for life by the Chief Justice of the Common-Pleas, whose Office is but at will, shall ever conclude the succeeding Justice. The reason of the Law is this. A Copy-holder upon voluntary Grants made by Copy doth not derive his Estate out of the Lord's Estate onely, for then the Copy-holder's Estate should cease when the Lord's Interest determineth; *Nam cessante primitivo, cessat derivativus*: but the life of the Copy-holder's Estate is the Custome of the Manor: and therefore whatsoever befalleth the Lord's Interest in his Manor, be it determined by the course of time, by death, by forfeiture, or other means; yet if the Lord were *legitimus Dominus pro tempore*, how small soever his Estate was, that is enough; for the same Custome that fixeth a Copy-holder instantly in his Land upon his Admittance, will likewise preserve and protect his Interest to the end, in such manner, that though the Lord's Interest faileth, yet his shall never fall to the ground, being upheld by such a prop, such a pillar; unless perchance the Copy-holder offer violence to his Founder, in breaking the Custome. If the Lord granteth a Copy-hold, and after doth sever this Copy-hold from the Manor, by granting the In-

heritance to a Stranger, though now one of the chief pillars of a Copy-hold-estate is wanting, *viz.* to be parcell of the Manor; yet because the Land at the time of the Copy-holder's Admittance had this necessary incident, this Severance, being a matter *ex post facto*, cannot amount to the destruction of the Copy-hold, especially being the sole act of the Lord himself. If a Manor be granted upon Condition, and before the Condition is broken the Land is granted by Copy, then the Manor becomes forfeited, and the Feoffor enureth; yet the Copy-hold-estate remaineth untouched, because lawfully established by Custome: and yet all mean Estates and Charges whatsoever granted by the Feoffee at the Common Law were voidable upon the Entry of the Feoffor; for we have a Ground in Law that when an Entry is made for breach of Condition, the party to all intents and purposes is in the same plight that he was in at the time of the making of the Estate. If a man seised of a Manor in Fee dieth seised, having issue a Daughter, and, his Wife being *primogenita* with a Son, the Daughter granted Lands by Copy; this Grant shall stand good against the Son, for the Daughter was *legitima Domina pro tempore*. So if the Feoffee of a Manor, upon Condition to infeoffe a Stranger

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the next day, maketh a voluntary Grant by Copy; this shall bind, and yet his Interest was to have but small continuance. If a Manor be granted with a Feme in Frank-marriage, and there is a Divorce had *causâ pracontractâ*, so that now the Interest of the Manor is granted to the Feme onely, and by Relation the Marriage is void *ab initio*: yet because the Baron was *legitimus Dominus pro tempore*, any Copy-holders Estates granted before the Divorce remain good. So if a man espouseth a Feme Seignioress under the age of Consent, and after she doth disagree; though the Marriage by Relation was void *ab initio*, yet Copy-holds granted before disagreement shall never be avoided, *causâ quâ suprà*.

If the Lord of a Manor committeth Felony or Murther, and Process of Outlawry be awarded against him, after the Exigent he granteth Copy-hold-estates, according to the Custom, and then is attainted; these Grants are authenticall, though by Relation the Manor was forfeited from the time of the Exigent awarded. So if the Lord had been attainted by Verdict or Confession, any Grant by Copy after the Felony or Murther committed shall stand good, notwithstanding the Relation. If the Lord of a Manor acknowledge a Statute, and then granteth Lands by Copy,

and after the Manor is delivered to the Cognisee in Extent; the Grant cannot by this be impeached. And if the Lord of a Manor taketh a Wife, and after maketh Copyhold-estates, according to the Custome, and dieth; though the Feme hath this Manor assigned unto her for her Dower, yet cannot she avoid these Copyhold-estates, because the Copy-holders are in by a Title paramount the Title of the Feme, viz. by Custome. But, peradventure, if the Heir, after the Death of his Ancestor, before the Assignment made unto the Feme for her Dower, had granted Lands by Copy; the Feme might avoid these Grants, because instantly upon the death of the Baron her Title received his perfection, and nothing more was wanting to the confirmation of her Interest. But though the quantity of the Lord's Estate in the Manor be not respected, yet the quantity of his Estate in the Copyhold is regarded. For if a Copyholder in Fee surrender to the use of the Lord for life, the Remainder over to a Stranger, or reserveth the Reversion to himself, if the Lord will grant this by Copy in Fee, whatsoever Estate the Lord hath in his Manor, yet having but an Estate for life in the Copyhold, no larger Estate shall pass than he himself hath; *Quia nemo potest plus juris in alium*

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transfere quàm ipse habet. And farther observe, that sometimes the Law respecteth the quantity of the Lord's Estate in the Manor: for what Acts soever are not confirmed by Custome, but onely strengthened by the power, authority and Interest of the Lord, have no longer continuance than the Lord's Estate continueth; and therefore it is held, that if a Tenant for life of a Manor granteth a Licence to a Copy-holder to alien, and dieth, the Licence is destroyed, and the power of Alienation ceaseth. As for the quality of the Lord's Estate in the Manor, that is much more now respected than either the ^{maner} quality of his Estate or the quality of his Person: for if the Lord, or he (whosoever he be) that maketh a voluntary Grant by Copy, hath no lawfull Interest in the Manor, but onely an usurped Title, his Grant shall never so bind the right Owner, but that upon his Entry he may avoid them; otherwise we should make Custome an agent in a Wrong, which the Law will never suffer. And yet if the Lord of a Manor by his Will in writing deviseth, that his Executor shall Grant Copy-hold-estates, *secundùm consuetudinem Manerii*, for the payment of his Debts, &c. and he make voluntary Grants accordingly; these Grants are good, notwithstanding the Executor hath no

Interest in the Manor, nor is *Dom. pro tempore*.

If a Disseisor of a Manor dieth seised, notwithstanding his Heir come in by ordinary course of Descent, yet because the Tort commenced by his Ancestor is still inherent to his Estate, if any Copy-hold-estate be granted by the Heir, it may be avoided by the Disseisor immediately upon his Recovery, or upon his Entry: and so if the Disseisor infeoffe a Stranger of the Manor, notwithstanding the Feoffee come in by Title, yet no Grant made by him of Copy-hold-Land shall ever binde the Disseised, no more than a Grant made by the Disseisor himself.

If Tenant in Tail of a Manor discontinueth and dieth, and after the Discontinuance granteth Copy-hold-estates; the Heir recovering in a Formedon in the Discender may avoid these Grants: for though the Discontinuee come in under a just Title, yet his interest being determined by the death of the Tenant in Tail, the Continuance of the possession is a Tort to the Heir, and acts done by Tortfeasors, tending to the Disinheritance of the right Owners, Custome will never so strengthen, but they may be adnihilated. So if a man seised of a Manor in right of his Wife alieneth this Manor, and dieth; any Grant made of Copy-hold-estates after his death may be avoided

voided by the Feme upon her Entry, or upon her Recovery in a *Cui in ultra*.

If a Manor be granted *pro antea vie*, and *Cestuy que vie* dieth, and the Grantee continueth still in the Manor, and maketh Grants by Copy, these shall not binde the Grantor of the Manor; for immediately upon the death of *Cestuy que vie* the Grantee was but a Tenant at sufferance, and had no Manor of lawfull interest; for a Writ of Entry *ad terminum qui prateriit* lieth against him, as against Deforceor.

And so if a Tenant for life of a Manor maketh a Lease for years of the same Manor, and dieth; Copy-hold-estates, granted by the Lessee after the death of the Tenant for life are voidable by the first Lessor.

If a Lessee for years of a Manor granteth a Copy-hold in Reversion, and before the Reversion eschue the term is expired, the Grant is void. And so I take the Law to be, if the Lessee surrendreth his term, and then before his Lease should have ended in point of limitation the Reversion falleth, yet the Grantee shall not have it.

If a Lease be made for years of a Manor, the Lease to be void upon the breach of a certain Condition, if the Condition be broken, and afterwards the Lessee before the Entry of the

the Lessor granteth Estates by Copy, these Grants shall never exclude the Lessor; for presently upon the breach of the Condition the Lease is void: but had the Manor been granted for life, in Tail, or in Fee, I think the Law would have fallen out otherwise; for before Entry the Frank-tenement had not been avoided, and wheresoever a man may enter and avoid any Estate of Frank-tenement upon the breach of a Condition, the Law adjudgeth nothing to be in him before Entry, and he may wave the advantage which he might take by the breach of the Condition, if he will; and therefore notwithstanding the accruer of the Title of the Grantor, yet before this Title be executed by Entry, the Grantee hath such a lawfull Interest, that what Estate soever he granteth by Copy in the interim shall stand good against the Grantor. And so if an Infant infeoffe me of a Manor, though he may enter upon me at his pleasure; yet Grants made by me by Copy before his Entry shall never be defeated by any subsequent Entry.

And the same Law is of Grants made by a Villain purchaser of a Manor, before the Entry of the Lord; or of Grants made after an Alienation in Mortmain, before the Lord paramount hath entred for a Forfeiture.

If a Parson after Institution, and before Induction, a Manor being parcell of his Glebe-Lands, grants Lands by Copy, and after is inducted; this admitting of the Copy-holders is no binding act: for though as to the Spiritualties he be a compleat Parson presently upon the Institution, yet as to the Temporalties he is not compleat before Induction. So if a Parson be admitted, instituted and inducted, but doth not subscribe to the Articles, according to the Statute of 13 *Eliz.* and granteth Lands by Copy, as before; this Grant shall not conclude the succeeding Incumbent, because his Admission, Institution and Induction were wholly void in themselves: but had the Parson been deprived for crime of Heresie, or for being meer *Laicus*, although he be declared by Sentence to be incapable of a Benefice, and so his Presentment void (*ab initio*;) yet because the Church was once full, untill the Sentence declaratory came, although the Deprivation shall relate to some purposes, yet because the Presentment is not in it self void, surely a Relation shall never be so much favoured as to avoid a Copy-hold-estate in this kind.

So much of Grants made by the Lords themselves. In Grants made by Copy-holders, as the Law respecteth the quality of the Copy-

Copy-holders Estate; so doth it respect both the quality of his Person, and quantity of his Estate.

The quality of his Person: for whosoever is uncapable of disposing of Land at the Common Law, cannot without special Custome pass away any Copy-hold. The quantity of his Estate: for no Copy-holder can possibly pass away more than is in him; and therefore if there be Joynt-tenants of a Copy-hold, one cannot aliene the whole. But if there be two Joynt-tenants of a Manor, and a Copy-holder escheateth, one of them may grant this Copy-hold and his Companion shall never avoid any part of it.

If a Copy-holder for life, the Remainder over in Fee to a Stranger, surrendreth in Fee, and the Lord admits accordingly; yet an Estate for life onely passeth.

So if the Lord of a Manor granteth a Copy-hold for life, where an estate in Fee is warrantable, and the same Grantee surrenders in Fee to the use of a Stranger, and the Lord admits him, *secundum officium sursumrestitutionis*; I think no Fee passeth: for though the Lord's Admittance may *primâ facie* seem to amount to a confirmation of the Estate surrendered; the Reversion resteth in him to dispose of according to the Custome. As where a Lessee

see for years at the Common Law maketh a Feoffment in Fee, and maketh a Letter of Attorney to his Lessor, to deliver Livery and seisin, who executeth it accordingly; though the Lessor be used as an instrument to perform the will of the Lessee, yet this being his voluntary act, the Law taketh it as a Consent for the passing away of the whole Inheritance. But if you look narrowly into both Cases, you shall finde the difference: in the latter Case, by the Feoffment the Fee is devested out of the Lessor, and therefore a Consent will serve to transfer the Reversion; but in the former Case, the Reversion is not pluckt out of the Lord by the Surrender, and therefore an implied Consent is too weak to remove it. I will onely adde one observation more, and so I will end with the Grantor.

The Law is not so strict to a Copy-holder, as that he must come personally into Court upon the making of every Surrender, but he may surrender by Attorney, as well as Livery and seisin may be made by Attorney at the Common Law: and should the Law be otherwise, great inconvenience would ensue; for how should Copy-holders that are in prison, or languishing upon bed, or beyond the Seas, surrender but by Attorney?

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But note this difference. If a man hath a bare Authority joyned with a Confidence without Interest, this Authority cannot be executed by Attorney: and therefore if I devise that my Executors shall sell my Land, they cannot sell by Attorney, for that were to make an Attorney upon Attorney, which the Law will in no wise permit. And though a man have an Authority joyned with an Interest, yet if the Authority be warranted by special Custome onely, it cannot be executed by an Attorney; and therefore if there be a special Custome, that a Copy-holder for life may make Estate for 20 years to continue after his death, these Estates cannot be made by Attorney. So if there be a special Custome, that an infant at the age of discretion may surrender a Copyhold; this Surrender, being confirmed by special Custome onely, cannot be made by Attorney. And so if there be a Custome, that a Copy-holder out of the Court may surrender into the hands of the Lord by the hands of two Customary Tenants; such Surrenders must be done in person.

But wheresoever there is a general Authority accompanied with an Interest, that Authority may be executed by Attorney: as *Cestuy que use*, after the Statute of 1 R. 3. and before the Statute of 27 H. 8. might have aliened

aliened by Attorney ; for at that time he had an absolute Authority to dispose of the Land at his pleasure , without any Confidence reposed in him.

And thus much of the Grantor : a word of the Grantee.

SECT. XXXV.

THE same persons that are capable of a Grant by the Common Law are capable of a Grant by Copy, according to the Custome of the Manor.

An Infant, a man *Non sana memoria*, an Idiot, a Lunatick, an Out-law, or an Excommunicate, may be Grantees of a Copy-hold-estate.

The Lord himself may take a Copy-hold to his own use. One Joynt-tenant may receive a Copy-hold from the hands of his Joynt-companion, because it passeth by Surrender, not by Livery.

A Feme-covert may be a Purchaser of Copy-hold, and this Purchase shall stand in force untill her Husband disagreeeth. Nay, farther, a Feme-covert may receive a Copy-hold-estate by Surrender from her Husband , because she cometh not in immediately by him , but by mediate means, *viz.* by the admittance of the Lord according to the Surrender.

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As the Feme is capable of receiving a Copy-hold from the hands of the Baron; so, by special Custome, the Baron may take a Copy-hold from the hands of his Feme; for in some Manors Custome doth enable the Feme to devise a Copy-hold to the Baron. But this Custome hath been much impugned, therefore I dare not justifie the validity of it.

What persons soever are capable of a Grant by Copy may well take by Attorney: not that the Lord shall be enforced to admit any one by Attorney, because upon every Admittance there is Fealty due by the party admitted, which is a Duty so inseparably annexed to the persons, that it cannot be discharged by Deputy, and therefore no reason the Lord should be enforced to admit by Attorney; but if he will admit him, it standeth good.

It is not necessary that, upon Surrenders of Copy-holds, the name of the party to whose use the Surrender is made, be precisely set down; but if by any manner of circumstance the Grantee may be certainly known, it is sufficient. And therefore a Surrender made to the Lord Arch-bishop of *Canterbury*, or the Lord Mayor of *London*, or the High-Sheriff of *Norfolk*, without mentioning ei-

ther their Christian-name or Sur-name, are good enough, and certain enough, because they are certainly known by this name, without farther addition. So if I surrender to the use of the next of my blood, to the use of my Wife, to the use of my Brother or Sister, having but one Brother or one Sister; these Surrenders are good without any additions, because the Grantee may certainly be known by these words.

If I surrender generally into the hands of the Lord, not expressing to whose use the Surrender shall be; this Surrender is a good Surrender, and shall enure to the benefit of the Lord.

If I surrender to the use of my Son *W*, having more Sons than one of that name; yet by an Averment this incertainty may be helped.

But if I surrender to the use of my Cousin, or my Friend; this is so general and so incertain, that no subsequent manifestation of my intention can any way strengthen it.

So if three surrender to the use of three or four of *S. Dunstan's* Parish, not naming the Parishioners by their names; this Surrender is utterly void.

And so if I surrender in the disjunction to the use of *J L.* or *J N*; this is insufficient for the incertainty.

And

And in customary Grants upon Surrenders the Law is not so strict as in Grants at the Common Law. For in Grants at the Common Law, if the Grantee be not *in rerum natura*, and able to take by virtue of the Grant presently upon the Grant made, it is meerly void: But in Customary Grants upon Surrenders the Law is otherwise: for though at the time of the Surrender the Grantee is not *in esse*, or not capable of a Surrender; yet if he be *in esse* and capable at the time of the Admittance, that is sufficient: and therefore if I surrender to the use of him that shall be Heir to *J S*, or to the use of *J S* next child, or to the use of *J S* next Wife; though at the time of the Surrender *J S* had no Heir, Child, or Wife, yet if afterwards he hath a Child, or taketh a Wife, his Heir, his Child or his Wife may come into the Court, and compell the Lord to admit according to the Surrender. So if I surrender to the use of him that shall come next into *Pauls* after such an hour; whose fortune soever it is to come first, the Lord must admit him, and I shall never avoid it. The same Law is, if I surrender to the use of him that *J S* shall nominate, or that I my self shall nominate to the Lord at the next meeting.

The reason of the Law is this; A Surrender

render is a thing executory, which is executed by the subsequent Admittance, and nothing at all is invested in the Grantee before the Lord hath admitted him according to the Surrender; and therefore if at the time of the Admittance the Grantee be in *rerum natura*, and able to take, that will serve.

Besides, in Customary Grants the intent of the Grantor is more respected than it should be by the strict rules of the Law: which appeareth by this, that if a Surrender be made of a Copy-hold to the Use of a last Will, and the Surrender deviseth it unto two, the one is admitted according to the purport of the Will, this shall inure to both. But though the Surrender be a thing executory and the intent of the Grantor so much favoured; yet if a Copy-holder will surrender to the Use of the right Heirs of *J S*, he being alive, this is void, because it cannot take effect according to the intent of the Grantor; for he would have the Grant to be executed presently, which cannot be, in regard that *J S* can have no heir till after his death. So much of the Grantee: and I come now to the Grant it self.

S E C T. XXXVI.

A Copy-hold Interest cannot be transferred by any other Assurance than by Copy of Court-Roll, according to the Custom.

If I will exchange a Copy-hold with another, I cannot do it by an ordinary Exchange at the Common Law, but we must surrender to each other's Use, and the Lord admit us accordingly.

If I will devise a Copy-hold, I cannot do it by will at the Common Law, but I must surrender to the Use of my last Will and Testament, and in my Will I must declare my intent.

If I am ousted by a Copy-holder, a Release made to him is void, because it would be a prejudice to the Lord; and besides, there is no Customary Right upon which the Release may inure: but a Release inuring by the way of extinguishing, where no prejudice accrue to the Lord, will serve to drown a Copy-hold right; and therefore if I
Co. 4. fol. 25. surrender out of Court upon Condition to the Use of *7 S.*, and the Presentment is made absolute in Court, and the Admittance framed accordingly, this Admittance
 and

and Presentment differing from the effect of the Surrender are both void. Yet because upon the Admittance the Lord is satisfied of his Fine, and so nothing at all prejudiced, and besides here is a Customary Right upon which the Release may be grounded; I may by a Release at the Common Law sufficiently confirm this void Estate. And so upon the same reason, if I am ousted of a Copy-hold, and the Lord admit him according to the Custome, a Release made by me at the Common Law will extinguish my Right: but if I make a lease for years of a Copy-hold, I cannot by my Release pass my Reversion, because this Release inureth by way of Inlargement to transfer an Interest, and not by way of Extinguishment to drown a right; but my way is to surrender my Reversion into the hands of the Lord, and he to grant it over to the Lessee.

S E C T. XXXVII.

IF Copy-hold-Land come into that plight that it cannot pass by Copy, it is become not alienable: and therefore if the Lord of a Manor will grant to me a Copy-hold in Fee, and after will grant the Inheritance of this Copy-hold to a Stranger, in regard that now

my Copy-hold is become no parcell of the Manor, and so I cannot surrender into the hands of the Lord and the Grantee of the Inheritance, though I am to him a Tenant, and am tied to doe unto him all manner of Services which are due without keeping of Court, as to pay Rent, to discharge Herriots, and all other Duties of the same nature; yet because the Grantee cannot keep a Court, and so is incapable of taking a Surrender, or making an Admittance, therefore I cannot by any means alien; for no Conveyance at the Common Law will serve, because it remaineth still Copy-hold notwithstanding, and what Customes soever were incident to the Land before Severance, do remain still undestroyed: as if the Land were Burrow-English or Gavel-kind before, it so continueth; and a Decree in Chancery will serve no more than an ordinary Assurance at the Common Law; for that bindeth my person only, not my Interest. Sithence therefore Copy-hold-estates cannot be conveyed away otherwise than by Copy of Court-Roll, according to the Custome, let us examine the nature of these Customary Grants, wherein three branches are to be considered.

Co. 4. fo. 24.

1. *The Surrender.*

2. *Presentment.*

3. *Admittance.*

In some Grants a Surrender is sufficient, without Presentment or Admittance.

In some an Admittance, without a Surrender or Presentment.

In some a Surrender and Admittance, are both necessary ; and in some a Surrender, Presentment and Admittance are all requisite.

SECT. XXXVIII.

IF a Copy-holder will surrender to the Use of the Lord, the Interest of the Copy-hold is sufficiently vested in the Lord immediately upon the Surrender, without any Admittance of the Lord, because the Lord cannot admit himself.

If the Lord will make a voluntary Grant of a Copy-hold, no Surrender is requisite ; for by the Admittance of the Lord according to the Custome the Copy-holder is sufficiently settled in his Land, without any other Ceremony.

If a Copy-holder will surrender in Court to the Use of a Stranger, besides the Surrender the Admittance is requisite : and if the Surrender

render be made out of Court into the Hands of the Lord himself, which the general Custome will warrant, or into the hands of the Bailiff or two Tenants of the Manor, which by special Custome only is warrantable; besides a Surrender, two other Ceremonies are requisite, the one a true Presentment of the Surrender in Court by the same persons into whose hands the Surrender was made, the other is an Admittance of the Lord according to the effect and tenor both of the Surrender and Presentment.

But now more particularly of every one of them apart, and first of a Surrender.

S E C T. XXXIX.

THis word *Surrender* is *vocabulum artis*; and therefore where a Surrender is needfull, if this one word be wanting, all other words used in ordinary Conveyances are uneffectual and insufficient to convey any Copy-hold-estate: for if a Copy-holder come into Court, and offer to pass his Copy-hold by word of Grant, of Gift, of Bargain or Sale, or such like, I doubt he will fail of his purpose; for as he is tied to a singular form of Assurance, so is he restrained to peculiar words in his Assurance.

Surrenders are made in several sorts according to the several Customes of Manors.

In some Manors, where a Copy-holder surrendreth his Copy-hold, he useth to hold a little Rod in his hand, which he delivereth to the Steward or Bailiff, according to the Custom of the Manor, to deliver it over to the party to whose use the Surrender was made in the name of Seisin; and from thence they are called *Tenants by the Verge*.

In some Manors, in stead of a Wand a Straw is used; and in other Manors a Glove is used. *Et consuetudo loci semper est observanda.*

A Surrender (where by a subsequent Admittance the Grant is to receive his perfection and confirmation) is rather a manifesting of the Grantor's intention, than of passing away any Interest in the possession; for till Admittance the Lord taketh notice of the Grantor as Tenant, and he shall receive the Profits of the Land to his own use, and shall discharge all Services due to the Lord: but yet the Interest is in him but *secundum quid*, and not absolutely; for he cannot pass away the Land to any other, or make it subject to any other Incumbrance than it was subject to at the time of the Surrender: neither in the Grantee is any manner of Interest invested be-

fore Admittance; for if he enter he is a Trespasser, and punishable in Trespass; and if he surrender to the Use of another, this Surrender is meerly void, and by no matter *ex post facto* can be confirmed. For though the first Surrender be executed before the second, so that at the time of the Admittance of him to whose Use the second Surrender was made his Surrenderer hath a sufficient Interest as absolute Owner; yet because at the time of the Surrender he had but a Possibility of an Interest, therefore the subsequent Admittance cannot make this act good which was void *ab initio*. But though the Grantee hath but a Possibility upon the Surrender, yet this is such a Possibility as is accompanied with a Certainty; for the Grantee cannot possibly be deluded or defrauded of the effect of his Surrender, and the fruits of his Grant: for if the Lord refuse to admit him, he is compellable to do it by a *Subpœna* in the Chancery; and the Grantor's hands are ever bound from the disposing of the Land any other way, and his mouth ever stopped from revoking or countermanding his Surrender. But, peradventure, if a Copy-holder languishing in extremity surrendreth out of Court to the use of his Cousin, in consideration of Consanguinity, or to the use of his Son, in consideration of natural Love and Affection,
and

and after recovereth his health before Presentment; this Surrender is revocable or countermandable: but if it be granted upon valuable consideration, as for the discharge of Debts, or for a summe of money paid, though it be made out of Court, yet it is as binding as any Surrender whatsoever made in Court.

And thus much for a Surrender: a word of a Presentment.

S E C T. XL.

TH E *Presentment*, by the general Customs of Maners, is to be made at the next Court-day immediately after the Surrender; but by special Custome in some places it will serve at the second or third Court. And it is to be made by the same persons that took the Surrender, and in all points material according to the true tenour of the Surrender. And therefore if the Surrender be conditional, and the Presentment be absolute, both the Surrender, Presentment and Admittance thereupon are wholly void.

But if the Conditional Surrender be presented, and the Steward in entring of it omitteth the Condition; yet upon sufficient proof made in Court, the Surrender shall not be avoided, but the Roll amended: and this shall

shall be no conclusion to the party, to plead or give in evidence the truth of the matter.

If I surrender out of Court, and die before Presentment, if Presentment be made after

my death, according to the Custom this is sufficient. So if he

to whose Use the Surrender is made dieth before Presentment; yet upon Presentment

made after his death, according to the Custom his Heir shall be admitted. And so if I

surrender out of Court to the use of one for life, the Rendror and the Lessee for life dieth before Presentment; yet upon Presentment

made, he in the Remainder shall be admitted. And so if I surrender to two joyntly,

and one dieth before Presentment, the other shall be admitted to the whole. The

same Law is, if those into whose hands the Surrender is made, die before Presentment,

upon sufficient proof in Court that such a Surrender was made, the Lord shall be com-

pelled to admit accordingly: and if the Steward, the Bailiff, or the Tenants into whose

hands the Surrender is made, refuse to present, upon a Petition or a Bill exhibited in the

Lord's Court the party grieved shall find remedy. But if the Lord will not doe him right,

he may both sue the Lord and them that took the Surrender in the Chancery, and shall there

find relief.

Thus

Thus much of Presentments : a word of Admittances.

SECT. XLI.

A *Dmittances* are threefold.

1. An Admittance upon a voluntary Grant.

2. An Admittance upon Surrender.

3. An Admittance upon a Descent.

In voluntary Admittances the Lord is an instrument : for though it is in his power to keep the Land in his own hands, or to dispose of it at his pleasure, and to that intent he may be reputed as absolute Owner ; yet because in disposing of it he is bound to observe the Custome precisely in every point, and can neither in Estate nor Tenure bring in any alteration, in this respect the Law accounts him Custome's instrument. If the Custome doth warrant an Estate onely *durante Viduitate*, and the Lord admits for life ; this shall not bind his Heir or Successor, because Custome hath not sufficiently confirm'd it. So if the Lord fail in reserving *verum & antiquum Redditi-um*, as if he reserveth ten shillings, where the usual Rent customably reserved is twenty shillings ; this may be a means to avoid the Admittance. And the Law is very strict in
this

this point of Reservation: for though the ancient accustomable Rent be reserved according to the quantity, yet if the quality of the Rent be altered, the Heir may avoid this Grant. For if the ancient Rent from time to time hath been twenty shillings in Gold, and the Lord reserveth it in Silver, this variance of the quality of the Rent is in force to destroy the Grant: so, if the ancient Rent hath been accustomably paid at four Feasts in the year, and the Lord reserveth it at two Feasts. So, if two Copy-holds escheat to the Lord, the one of which hath been usually demised for twenty shillings Rent, the other for ten shillings Rent, and he granteth them both by one Copy for one Rent of thirty shillings; this is not good: and so if a Copy-hold of three Acres escheats, which hath ever been granted for three shillings Rent, and the Lord granteth one Acre, and reserveth *pro rata* one shilling Rent, *verus & antiquus Redditus* is not reserved. But if a Copy-hold of six Acres, which hath ever been demised for six shillings Rent, escheateth to two Copartners, and one granteth three Acres, reserving three shillings *pro rata*; this is a perfect Reserving.

In Admittances upon Surrender, the Lord to no intent is reputed as Owner, but wholly as an Instrument; and the party admitted shall be

be subject to no other charges or incumbrances of the Lord, for he claims his Estate under the party that made the Surrender: and in the Plaint in the nature of a Writ of Entry in the *per* it shall be supposed in the *per* by him, not by the Lord.

And as in Admittances upon Surrenders, so in Admittances upon Descents, Co. 4. fo. 27. b. the Lord is used as a meer Instrument, and no manner of Interest passeth out of him; and therefore neither in the one nor in the other is any respect had unto the quality of his Estate in the Manor; for whether he hath it by right or by wrong it is not material, these Admittances shall never be Co. 1. fo. 140. b. called in question for the Lord's Title, because they are judicial acts, which every Lord is enjoined to execute.

Besides, in Admittances upon Surrenders the Lord being accounted nothing but a necessary Instrument, it followeth that he hath a bare customary power to admit *secundum formam & effectum sursumreddendi*: therefore if there be any variance between the Admittance and the Surrender either in the Person, in the Estate, or in the Tenure, or in any other Collateral points, the Lord doth only transfer an Estate according to the Surrender and his authority, if it can take such effect, As if I surrender

der to the Use of *J S*, and the Lord admits *J N*, this Admittance is wholly void; and, notwithstanding this Admittance, the Lord may afterwards admit *J S* according to the effect of his Authority: but had he admitted *J S* and *J N* joynly, then the Admittance had been void for the one, and good for the other, like the Case of a Devise; where a Devise of a term is made to *J S*, and the Executors agree that *J S* and *J N* shall have this term, this consent is void to *J N*; for after the consent of the Executors, *J S* is in by the Devise. Yet some are of opinion, that if I surrender to the Use of *J S* in Fee, and the Lord admits *J S* together with his eldest Son and Heir apparent, that this is an Estate by Estoppel to *J S*, and that he shall only claim joynly with his Son, because he might have refused an Admittance in this manner: but I can hardly be brought to think that this Admittance, giving a present Interest in the Son, who by Surrender was to have no Interest till the death of his Father, should be any such Estoppel.

If I surrender to the use of *J S* for life, and the Lord admits him in Fee,
 Co. 4. fo. 29. an Estate for life only passeth. So
 if I surrender without mentioning any certain Estate,

Estate, because by implication of the Law Estate for life only passeth, though the Lord admit in Fee, no more doth pass than the implication of Law will warrant. If I surrender with the Reservation of a Rent, and the Lord admits, not reserving any Rent, or reserving a less Rent than I reserved upon the Surrender, this Admittance is wholly void: but if the Lord reserveth a greater Rent, then is the Reservation void only for the Surplusage, and the Admittance so far curreant as it agreeth with my Surrender. If I surrender upon condition, and the Lord omits the Condition, the Admittance is wholly void: but if my Surrender Co. 4. fo. 25. be absolute, and the Lord's Admittance be conditional, the Condition is void, but the Admittance in all points else is good.

The reasons of these diversities are these. Where an authority is given to any one to execute any act, and he executeth it contrary to the effect of his authority, this is utterly void: but if he executeth his authority, and withall goeth beyond the limits of his Warrant, this is void for that part only wherein he exceedeth his authority.

These Admittances upon Surrender differ from Admittances upon Descents in this, that in Admittances upon Surrender nothing is vested

ed in the Grantee before Admittance, no more than in the voluntary Admittances; but in Admittances upon Descents the Heir is Tenant by Copy immediately upon the death of his Ancestor, not to all intents and purposes; for peradventure he cannot be sworn of the Homage before, neither can he maintain a Plaint in the nature of an Assise in the Lord's Court before, because till then he is not compleat Tenant to the Lord, no farther forth than the Lord pleaseth to allow him for his Tenant. And therefore if there be Grandfather, Father and Son, and the Grandfather is admitted, and dieth, and the Father entreth, and dieth before Admittance, the Son shall have a Plaint in the nature of a Writ of Ayel, and not an Assise of Mortdauncestor. So that to all intents and purposes the Heir, till Admittance, is not compleat Tenant; yet to most intents, especially as to Strangers, the

Co. 4. fo. 23. Law taketh notice of him as of a perfect Tenant of the Land instantly upon the death of his Ancestor; for he may enter into the Land before Admittance, take the profits, punish any Trespass done upon the ground, surrender into the hands of the Lord to whose Use he pleaseth, satisfying the Lord his fine due upon the Descent, and by Estoppel he may prejudice himself of his Inheri-

heritance : for if an Estrange come and sur-
 render to the Use of him and his Wife before
 Admittance, he shall ever claim joyntly with
 his Wife, and never be taken as sole Tenant.
 And the Lord may avow upon him before Ad-
 mittance for any arrerages of Rent or other
 Services. And last of all, upon Co. 4. fo. 22. b.
 an actual Possession, there shall
 be *possessio Fratris* before Admittance : for if
 a Copy-holder in Fee have issue a Son and a
 Daughter by one Venter, and a Son by ano-
 ther Venter, and dieth seised, and his Son by
 the first Venter entreth into the Land, and
 dieth before Admittance, the Daughter shall
 inherit as Heir to her Brother ; and not the
 Son by the second Venter as Heir to his Fa-
 ther. And many times the possession of a
 Guardian or a Termer, without an actual En-
 try, or any Claim made by the Heir, will make
 a *possessio Fratris* : as if a Copy-holder in Fee,
 having issue a Son or a Daughter by one Ven-
 ter, and a Son by another Venter, by licence
 of the Lord maketh a Lease for years, and di-
 eth, and the Son of the first Venter dieth be-
 fore the expiration of the Term, being neither
 admitted, nor having made any actual Entry,
 or any Claim ; yet this possession of the Lessee
 is sufficient, and the Reversion shall descend
 to the Daughter of the first Venter, and not to
 I the

the Son of the second Venter. But if the Lease had been determined living the Son by the first Venter, and afterwards he had died before any actual Entry made, the Law would have fallen out otherwise, because there was a time when he might have lawfully entred. Therefore where some have imagined that nothing should be invested in the Heir before Admittance, because every Admittance of an Heir upon a Descent amounteth to a Grant, and so may be pleaded; they are in an error: for though it be true, that after Admittance the Heir may in pleading alledge this as a Grant, and that hath been allowed, to avoid the inconveniencies that otherwise should ensue; for
Co. 4. fo. 22. b. if the Copy-holder should be driven in pleading to shew the first Grant, either that was made before the memory of man, and so is not pleadable, or since the memory of man, and then Custome fails; for this reason the Law hath allowed a Copyholder in pleading to alledge any Admittance, as well upon a Descent as upon a Surrender, as a Grant: and yet he may, if he will, alledge the Admittance of his Ancestors as a Grant, and shew the Descent to him, and that he entred, and well, without any Admittance. But the Heir cannot plead that his Ancestor was seised in Fee at the will of the Lord, by Copy of Court-Roll,

of such a Manor, according to the Custome of the Manor, and that he died seised, and that the Copy-hold descended upon him; because in truth such an Interest is but a particular Interest at will, in judgment of Law, although it be descendable by Custome.

So that I conclude, that an Admittance is principally for the benefit of the Lord, to entitle him to his Fine, and not much necessary for strengthening of the Heir's Title.

Then will some say, if the benefit which the Heir shall receive by the admittance will not countervail the charges of the Fine, he will never come in, and take up his Copy-hold in Court, and so defeat the Lord of his Fine. I assure my self, if it were in the election of the Heir to be admitted or not to be admitted, he would be best contented without Admittance; but the Custome in every Manor is compulsory in this point: for either upon pain of Forfeiture of their Copy-hold, or of incurring some great penalty, the Heirs of Copy-holders are enforced in every Manor to come into Court, and be admitted according to the Custome, within a short time after notice given of their Ancestor's decease.

And thus much of the Grant it self: a word of the things Granted.

S E C T. XLII.

THings that lie not in Tenure are not grantable by Copy ; as Rents , Bailiwicks , Stewardships , Common in gross , Advowsons in gross , and such like ; all which are incorporate Hereditaments , and therefore no Rent can issue out of them , neither can they be held by any manner of Service . But an Advowson appendant , a Common appendant or a Fair appendant may pass by Copy , by reason of the principal thing to which they are appendant : and generally what things soever are parcell of the Manor , and are of perpetuity , may be granted by Copy , according to the Custome ; as Under-woods growing upon the Manor , being things of continuance , (for after they are cut they will grow again *ex stipitibus*) may well be granted by Copy ; and so of Herbage or any other profit of the Manor . And sometime of the grant of a Copy-hold things shall pass that are severed from the Manor : as if the Lord of a Manor grant his Manor for years , except . *Boscis & Subboscis* growing in certain Copy-hold-ground , and the Lessee by his Steward granteth a Copy-hold , within which Manor there is a Custome that every Copyholder

holder may take within his Copy-hold Woods and Under-woods growing upon the ground for his necessary fuel; notwithstanding this exception in the Lease of the Manor, the Copy-holder may cut down Woods or Under-woods according to the Custome, though by exception severed from the Manor: for though the Lessee of the Manor, in respect of the exception, could not meddle with the Woods or Under-woods, and so it might seem *prima facie* very probable that the Copy-holder, coming in by the voluntary Admittance of the Lessee, should have no more authority nor interest than the Lessee himself had; yet because the Copy-holder was once in by Custome, and so his Title being grounded upon Custome is paramount the exception, therefore the exception in the Lease of the Manor, though preceding the Grant of the Copy-hold, cannot any way touch or prejudice the Copy-holder. And so, if there be a Custome within a Manor, that Copy-holders have used to have Common in the Wastes of the Lord, and the Lord granteth away his Wastes, and after granteth a Copy-hold, the Copy-holder shall have Common: but in alledging the Custome he shall not say, *Quod infra Maner. præd. talis habetur consuetudo*, but that till such a time, *viz.* before the Severance, *talis habebatur, & toto tempore, &c. consuetudo*, and

and then shew the Severance. If there be an uncertainty in the things granted, the Grant is not therefore insufficient; for by the election of him that is the first Agent it may be made certain.

As if I grant by Copy twenty loads of Hassell or twenty loads of Maple, in
 Co. 4. fo. 31. a. the disjunctive, to be cut down
 Co. 2. fo. 37. a. and taken by the Grantee in my Manor of *Dale*, there the Grantee hath election to make choice of which he pleaseth, because he is to perform the first act of cutting down and taking them: but if I am to cut them down, and deliver them to the Grantee, then have I the election. And observe this difference touching this point of Election.

If a Grant be made in the disjunctive of two annual things and things of continuance; if the election belong to the Grantor, and he faileth at the day to make election, yet his election is not determined, but continueth the same after the day that it was before the day: but otherwise it is where things are not annual, but are to be performed *unicâ vice tantum*.

Therefore if the Lord of a Manor granteth by Copy twenty Trees growing upon *Black-acre* or *White-acre*, to be cut down yearly by him-

himself, and to be delivered to the Grantee at such a day; though the Grantor fail at his day to make his election, yet his election is not gone, because the things granted are annual: but had these Trees been to be delivered to the Grantee once onely, and not yearly, then by the failor of the Grantor at the day the election is devolved to the Grantee.

SECT. XLIII.

AND thus much of the thing Granted: a word of the Instruments through whose hands, as through Conduit-pipes, the Lands are *gradatim* conveyed to the Purchaser. I will not speak of those men that are used as Instruments by special Custome to present in Court Surrenders taken out of Court: These I have sufficiently spoken of already. I will here point onely at these persons that, by the general Custome of every Manor, are employed as necessary Instruments in Customary Admittances, and will cursorily examine the extents of their Authorities, and the quality of their Offices.

The persons I aim at are these;

1. The *Lord*,
2. The *Steward*,
3. The *Under-Steward*.

SECT. XLIV.

THE Lord's Authority consisteth chiefly in these things.

1. In punishing Offences and Misdemeanors committed within his Precincts ; as not performance of Customes , breach of By-laws , not discharging of Duties , and such like.

2. In deciding Controversies arising about the Title of Copy-hold-Land lying within his bounds : and when he sitteth as Judge in Court to end debates of this nature, he is not tied to the strict form of the Common Law , for he is a Chancellour in his Court , and may redress matters in Conscience upon Bill exhibited, where the Common Law will afford no remedy in the same kind ; as to insist in one familiar Example. If I surrender a Copy-hold to the Use of a Stranger, upon confidence that, such Debts being by me discharged , he shall surrender back this Copy-hold ; I upon discharge of the Debts demand a Surrender , and he refuseth : at the Common Law I were left remediless, this being a bare Confidence, and no Condition ; but upon Bill exhibited in the Lord's Court I shall be relieved, for the Lord upon proof of the matter may
seise

seise the Copy-hold, and re-admit me, according to the effect of the Confidence.

3. In admitting Copy-hold. And in this Customary power of Admittance the Lord doth somewhat outstrip the Steward; for the Lord may make either Admittances upon voluntary Grants, Admittances upon Surrenders, Admittances upon Descents, in any place where he pleaseth out of the Manor, but so cannot the Steward: and in giving Licence to Copy-holders to aliene by Deed; and in this point of Licence the Lord's authority doth exceed the Steward's authority. For though some are of opinion, that it is both usual and warrantable for the Steward of a Manor, in absence of his Lord, to license a Copy-holder in full Court to aliene by Deed for as many years as he shall think good, because he is Judge in the Court, and besides the Entry of it in the Court-Roll is in this manner, *Ad hanc Curiam JS, petit licentiam Domini dimittendi, &c. Cui Dominus licentiam dat, &c.* and therefore this Licence being granted in the Lord's name in full Court, the Lord shall never enter for a Forfeiture, but shall ever be estopped to say the contrary, but that he did give Licence: yet (under reformation be it spoken) I must mistrust the truth of this opinion; for this power
of

of licensing Copy-holders to aliene by Deed is not Customary, for then it were as proper to the Steward as to the Lord, but it is a power of Interest annexed to the person of the Lord in respect of his Estate in the Manor, and not in any other collateral respect: and therefore the Steward having a bare authority to execute what the Custome of the Manor doth warrant, sans doubt he cannot *virtute officii* grant any unwarrantable Licence to aliene by Deed, no more than to commit Waste; for the one act as well as the other tendeth to the breach of Custome, and both of them, without a sufficient allowance, amount to the Forfeiture of a Copy-hold: but by expresse words in the Steward's Patent, or by special authority given him by the Lord, or by some particular Custome warranting the same, the Steward may in Court lawfully license Copy-holders to aliene as well as the Lord may. And thus much of the Lord.

SECT. XLV.

S*teward* is derived from those two words, *Stede*, and *Ward*; and so any that doth supply another's place, or that is in any employment Deputy to another, may according to the true sense of the word be termed a Steward:

Steward : as the High Steward of England, because the King appointeth him in divers matters to exercise his place ; and so the Under-Sheriff may be termed by the name of the Sheriff's Steward, being his Deputy. And how properly the Lord's Steward is so named, any man may judge by this, that the whole Authority of the Steward is derived from the Lord as from the Head ; and not onely so, but withall he representeth the Lord's person in many employments : for in the Lord's absence he sitteth as Judge in Court to punish Offences, determine Controversies, redress Injuries, and the like : and farther, some things he performeth in the Lord's name, and not in his own name, for if the Seward admitteth any Copy-holder, or by special Authority or particular Custome licenseth a Copy-holder to aliene, this Admittance and Licence shall be made in the Lord's name, and the Entry in the Court-Roll shall be, *Quod Dominus per Senascallum admisit & licenciavit*, and not that the Steward did admit or license. Therefore sithence the Steward hath this measure of Authority and Confidence committed unto him, the Lord shall doe very well to be very carefull in making choice of his Steward ; for if he be defective in any one of these three qualities, Knowledge, Trust, or Diligence, the Lord
may

may be much prejudiced and damnified: therefore *Fleta* wisely giveth the Lord
Fleta, l. 2. c. 6. this counsel, *Provideat sibi Dominus de Senescallo circumsperto & fideli & pacifico & modesto, qui in Legibus Consuetudinibusque Provincia Domini sui in omnibus tueri affectet, quique Ballivos Domini in suis erroribus & ambiguis sciat instruere & docere, quique egenis parcere, & nec prece vel pretio velit à tramite justitiæ deviare & perversè judicare.*

These Stewards for the most part have Patents for their Offices, yet they may be retained by parol; and this Retainer by parol is as effectual in all points before discharge, as the most effectual institution by Patent: for a Steward thus retained may take Surrender out of Court, or make voluntary Admittances, or any other act incident to the Office of a Steward, as well as a Steward instituted by Patent. But in the King's Manors a Steward cannot be retained by parol by the mouth of the Auditor or Receiver; but to make the Steward's Authority currant, especially to make voluntary Admittances, it is necessary he have a Patent, and then, by virtue of his patent, without any special Authority or particular Custome, he may justifie the making of any voluntary Admittance upon Escheats or Forfeitures.

feitures, or the doing of any act belonging to his Office. But though he may *ex officio* doe those things without special warrant, yet Dutie binds him, before he make any voluntary Admittance, to inform the Lord Treasurer of *England*, the Chancellour, and Barons of the *Exchequer*, or any of them, for his better direction, and the King's better benefit. The Law is not very curious in examining the imperfections of the Steward's person, nor the unlawfulness of his Authority; for be he an infant, or *non compos mentis*, an Idiot, or Lunatick, an Out-law, or an Excommunicate, yet what things soever he performeth as incident to his place, can never be avoided for any such disability, because he performeth them as a Judge, or at least as Custome's Instrument: and for his Authority, though it prove but counterfeited if it come to exact trial, yet if in appearance or outward shew it seemeth currant, that is sufficient. As if I grant the Stewardship of my Manor of *Dale* by Patent, and in the Patentee's absence a Stranger by my appointment keepeth Court, this is authentical. If a Grant of a Stewardship be made to one, and for some fault or defect in the Grant it is avoidable, yet Courts kept by him before the Avoidance shall stand in force; and whatsoever he did

as

as Steward is ever unvoidable. As if a Corporation retaineth a Steward by parol, and he keepeth a Court, punisheth Offences, decideth Controversies, taketh Surrenders, maketh Admittances either upon Surrenders or Descents; these acts being judicial shall ever stand for currant, though his Authority be grounded upon a wrong foundation, for a Corporation cannot institute any such Officer without Writing. And so if the King's Auditor or Receiver retain a Steward by parol, he may lawfully execute any judicial Act; but things which he performeth as Custom's Instrument, not as Judge, such as are voluntary Admittances, neither in the Retainer by the Corporation, nor in this Retainer by the King's Officers, shall any whit bind: but if a Stranger, without the appointment of the Lord, or consent of the right Steward, or without any colour of Authority, will of his own head come into a Manor and keep a Court; it seemeth that the performance of any judicial duty, or the executing of any act whatsoever, will not be warranted, especially if the Court be kept without warning given to the Bailiff by precept, according to the Custome.

The Office of a Steward may be forfeit three manners of ways.

1. By Abuser.
2. By Non-user.
3. By Refuser.

1. By *Abuser*. As if the Steward burn the Court-Rolls, or if he taketh a Bribe to wink at any Offence, or use Partiality in any cause depending before him; these and the like Abuses will make him subject to a Forfeiture.

2. By *Non-user*. As if the Steward by his Patent being tied to keep Court at certain times of the year, without request to be made by the Lord, faileth, and by his Failor the Lord receive any prejudice, this is a Forfeiture. But if the Lord be not damnified, then this Non-user is no Forfeiture. As if a Parker attends not for the space of three or four days, and no prejudice or damage happeneth in the interim, this is no Forfeiture. And in Offices which concern the administration of Justice, or the Commonwealth, the Law is more strict than in these Offices which concern private men: for where an Officer *ex officio*, or of necessity, ought to attend for the Administration of Justice, or for the good of the Commonwealth, there Non-user or Non-attender in Court is Forfeiture, though this be prejudicial to no man; as the Office of the Chamberlain in the *Exchequer*, a Protonotary
Clark

Clark of the Warrants, *Exigenter*, *Filazer*, or the like in the Common Pleas; because the attendance of these and the like Officers is of necessity for the administration of Justice: so the attendance of the Clerk of the Market is of necessity for the good of the Commonwealth, and so is holding of the Sheriff's Tourn, &c.

By *Refuser* the Office of a Steward may be thus forfeited: If the Steward be tied by his Patent to keep Court upon a demand or request to be made by the Lord, if the Lord demandeth or requesteth him to keep a Court, and he faileth; this is a Forfeiture, though the Lord be thereby nothing damnified. And thus much of the Steward.

SECT. XLVI.

THE Under-Steward is the Steward's Deputy, and sometimes appointed by writing, sometimes by parol: and the extent of his Authority is as great as the Steward's own Authority, and his Office consisteth in performance of the self-same Duties that the High Steward himself is to perform: onely in this point the power of the Steward goeth beyond the power of the Under-Steward, that the Steward can make an Admittance out of Court,

Court, and it shall stand good, if Entry be made in the Court-Roll, that he that is admitted hath paid his Fine and hath done Fealty; but the Under-steward, though he may take a Surrender out of the Court, yet he cannot make any Admittance out of Court, without special Authority or particular Custome.

Some have thought that an Under-steward may be made without special words in the Steward's Patent authorizing him to make a Deputy; but surely, since it is an Office of knowledge, trust and discretion, it cannot, unless it be in cases of necessity. As if an Office of Stewardship descend unto an Infant, he may make a Deputy, because the Law presumeth he is himself incapable to execute it. So if it be granted to an Earl, in respect of the exility of the Office in a base Court, and of the dignity of the person, who is *Præpositus Comitatus*, and had in ancient time the charge and custody of the whole Shire, whose attendance the Law intendeth to be most necessary upon the King and the commonwealth; therefore it is implied in Law, for the conveniency, that he may make a Deputy, for whom he ought to answer. This is one observation touching Under-stewards: In Admittances made by Under-stewards, as well as in Admittances made by the Stewards themselves, it is good order to express

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press in the Copy and in the Court-Roll the name of the Under-steward or the Steward; because in pleading any Admittance a man must say that he was admitted by such a one Under-steward or Steward, naming his name. And this shall suffice touching the manner and means of granting Copy-holds. Suffer me now in the fourth place to point at the several estates of Copy-holders, together with their several qualities incident to their several Estates.

SECT. XLVII.

ALL Estates whatsoever may be reduced to one of these three Heads;

1. Inheritance,
2. Frank-tenant,
3. Chattrells.

All Inheritances are of two sorts; either Fee-simples, or Fee-tails.

Of Fee-simples some are determinable, some are undeterminable.

Determinable, as where Land is given to a man and his Heirs for so long time as Paul's Steeple shall stand.

Undeterminable, as where Land is given to a man and his Heirs without farther limitation.

Of *Fee-tails* some are general, some are special.

General, as where Land is given to a man and the Heirs of his body, or Heirs-males or females of his body.

Special, as where Land is given to a man and the Heirs, males or females, which he shall beget of such a woman.

All *Frank-tenants* are of two sorts; either created by the act of the party, or by the act of the Law.

Of *Frank-tenants* created by the act of the party, some are determinable by Death, some by collateral means.

By Death, as Estates granted during the life of the Grantor, of the Grantee, or of a Stranger.

By collateral means, as Estates granted *quamdiu fuerit innupta*; to a Widow, *quamdiu remanserit vidua*; or to a Minister, *quamdiu Sacerdotium exercuerit*.

Of *Frank-tenants* created by the act of the Law, some are *Frank-tenants simpliciter*, some *secundum quid*. *Simpliciter*, as the Estates of a Tenant in Dower, of a Tenant by the curtesie, of an Occupant, a Tenant in tail after possibility of Issue extinct. *Secundum quid*, as the Estates of a Tenant by Statute-Merchant, Statute-Staple, and *Elegit*; who though they

they are to have the Land but for so many years as will give a plenary satisfaction to their Debts, yet by the Statute of *Westm.* 2. they may maintain an Assise, which no other Tenant having but a Chattel can have.

All *Chattels* are either certain, or uncertain. Of *Chattels* certain, some are in themselves certain, some are made certain by relation to a certainty. Certain in themselves, as where Lands are granted for 20, 30, or 40 years. Certain by relation to a certainty, as where Land is granted for so many years as *J* S hath Acres of Land.

Of uncertain *Chattels*, some are uncertain in their commencement, some uncertain in their determination.

In their Commencement, as where a Guardian hath an Estate during the Minority of the Heir.

All these Estates, either by the general or by the particular Customes of Manors, are of Copy-holds as well as of Free-holds: in what

Co. 4. fo. 23. manner soever an Estate in Fee-

simple is warranted by the Custom, most inferiour Estates are by implication likewise warranted. All Frank-tenants created by the act of the party, the Estate of an Occupant, and all *Chattels* whatsoever, without any other particular Custom, are hereby warranted.

But

But the Law is otherwise of Estates in Dower, by the curtesie, by Statute-Merchant, Statute-Staple, or *Elegit*: for as long as such a Copy-hold, by the Custome of the Manor grantable in Fee-simple, continueth in the Copy-holder's hands, it is not liable to any of these Estates; but if once it cometh to the Lord by Escheat, Forfeiture, or by other means, so long as it remaineth re-united to the Manor, it is in the nature of a Free-hold, and shall be subject to the charges and incumbrances as Land at the Common Law. And howsoever by implication these Estates are not allowed in Copy-holds continuing in the Copy-hold possession; yet by particular Custome the Wife may be Tenant in Dower, the Husband Tenant by the curtesie, a Stranger Tenant by Statute-Merchant, Statute-Staple, or *Elegit*, of a Copy-hold, resting in the Copy-hold, as well as if it rested in the Lord. Whether an Estate-tail, or an Estate-tail after possibility of Issue extinct, which hath a necessary depending upon an Estate-tail, may by any particular Custome be allowed, that I may dispute, but cannot determine; for it is *vexata questio*, much controverted, but nothing concluded. I will briefly touch the reasons alledged on both sides. They which are against the validity of

Intails by special Custome do chiefly urge these two reasons: that no Estates-tail were before the *Stat. de Donis conditionalibus*, but all Inheritances were Fees conditional; and the Statute being made 13 E. 1. which is within the memory of man, it cannot be that any special Customes have any Commencement since the Statute, for then a Custome might begin within time of memory, which is altogether repugnant to the rules of Custome.

Two great Inconveniences would ensue if a Copy-holder might be Intailed by special Custome, because neither Fine nor common Recovery can bar it; so that he hath such an Estate, that he cannot of himself, without the assent of the Lord, dispose of it either for the payment of his Debts, for the advancement of his Wife, or preferment of his younger Sons.

SECT. XLVIII.

THE main reasons insisted upon in defence of intailing Copy-holds are these.

1. In divers Manors they have been from time to time not only reputed as Tenants in tail, but in every man's mouth termed by that name.

2. A Formedon in the Descender lieth of a Copy-holder, which Writ none can bring but Tenant in tail.

3. A Remainder limited upon such an Estate in such Manors hath been allowed, and therefore is no Fee conditional; for upon a Fee, whether absolute or conditional, a Remainder can by no means depend.

4. It is a common usage there by a Recovery to dock Intails of Copy-hold, or to defeat these Estates by Presentment that the Copy-holder hath committed a Forfeiture, and so the Lord to seise, and then to surrender it to the purchaser; and therefore there is not that inconvenience which is supposed in the Copy-hold, *scilicet*, want of power to dispose of such an Estate without the Lord's consent.

5. Much inconvenience would depend upon this, if Copy-holds might not be intailed; for it would tend to the subversion and destruction of many mens Estates, which from time to time they have enjoyed without contradiction: and therefore for the quiet of the Commonwealth how necessary it is that Copy-holds should be intailed, let any man judge.

Thus much of the several Estates of the Copy-hold: a word of their several Qualities incident to several Estates.

SECT. XLIX.

WHat Qualities soever are necessarily incident to Estates at the Common Law, are incident to Estates by Custome. In illustrating this I will confine my self to the discussing of these two Points.

1. What words will create Copy-holds of Inheritance, and what Copy-holds of Frank-tenant.

2. How Copy-holds of Inheritance shall descend.

Co. 4. fo. 29. Touching their Creation, Copy-holds of Inheritance and Copy-holds of Frank-tenement are created by the same words that Inheritance and Frank-tenement at the Common Law are created by.

If a Copy-hold be granted to a man and to his Heirs-males, or Heirs-females; if to a man & *sanguini suo hereditabili*; if to a Dean and Chapter, or to a Mayor and Commonalty, without any expresse Estate, or without a limitation of some inferiour Estate: in all these Grants a perfect Estate in Fee passeth.

And so peradventure if I surrender a Copy-hold to a man and his Heirs, and he, reciting this Estate, re-surrendreth in the same manner to me that I surrendered to him, not making

king any mention of my Heir ; yet this Recital seemeth sufficient to pass a good Fee-simple.

So if I surrender unto you as large an Estate as *J S* hath in his Manor of *D*, and he hath a Fee-simple in his Manor ; it is somewhat probable that an Estate in Fee-simple should pass, by reason of his relation, without the word *Heirs*.

If a Copy-hold be surrendred to a man & *semini suo hereditabili de corpore*, or to a man & *heredibus ex ipso procreatis*, or to a man in Frank-marriage with his Wife ; in these Grants an Estate-tail passeth in the first without the word *Heirs*, in the second without the word *body*, in the third without either.

If the King by his Steward granterh a Copy-hold to a man and to his Heirs-males, or Heirs-females ; no Fee-simple passeth, because the Lord never intended to pass such an Estate.

If a Copy-hold be granted to an Abbot and to his Heirs, an Estate for life onely passeth.

So if I grant a Copy-hold to a man in Fee-simple *ac sanguini suo imperpetuum*, or *sibi & Assign. suis imperpetuum* ; yet the word Heirs wanting, no greater Estate than for life passeth.

The

The same Law is, if a Copy-hold be granted to a man and to his Heirs as long as *J S* shall live; this is only an Estate *pur autre vie*, and a Render limited upon this Estate is good.

But if a Copy-hold be granted to a man and to his Heirs as long as such a Tree shall grow in such a ground; this is a good Fee, and a Render limited upon it is void.

If a Copy-hold be granted to *J S* and *J N & Heredibus*, they are Joynt-tenants for life; and no Inheritance passeth unto either, because of the uncertainty for want of this word *suis*: but if a Copy-hold be granted to *J S* only & *Heredibus*, a good Fee-simple passeth without the word *suis*.

If a Copy-hold be granted to a man & *Heredibus*, an Estate-tail doth not pass, for want of the words *de corpore*. And if a Copy-hold be granted to a man & *Liberis and Pueris suis de corpore*; an Estate-tail doth not pass, for want of this word *Heirs*: for what Estates sœever are Intails since the Statute *De donis conditionalibus* were Fee-simples conditional; but this could be no Fee-simple conditional before the Statute, without the word *Heirs*, and therefore no Intail since the Statute. And for the same reason, if a Copy-hold be granted to a man and to the
Issues.

Issues-males of his body, an Estate for life only passeth.

If a Copy-hold be granted to a man, without expressing any certain Estate by implication of Law, an Estate for life only passeth: and if I grant a Copy-hold to three, *habendum successive*, they are Joynt-tenants, unless by special Custome the word *successive* make their Estates several. Thus much touching the creation of Copy-hold-estates:

SECT. L.

THE Descents of Copy-hold of Inheritance are guided and directed by the rules of the Common Law, as well as the creation of Copy-hold-estates.

If a Copy-holder in Fee-simple, having Issue a Son and a Daughter by one Venter, and a Son by another Venter dieth, and the Son by the first Venter entreth and dieth, the Land shall descend to the Daughter; *Quia possessio Fratris de Feodo simplici facit Sororem esse Heredem.*

But if a Copy-holder in tail have Issue a Son and a Daughter by one Venter, and a Son by another Venter, and dieth, and the Son by the first Venter entreth and dieth; the Son of the second Venter shall inherit.

If

If a man have Issue a Son and a Daughter by one Venter, and a Son by another Venter, the eldest Son purchaseth a Copy-hold in Fee, and dieth without Issue; the Daughter shall have the Land, not the younger son, because he is but of the half blond to the other.

If a man hath a Copy-hold by descent from his Mother's side, if he die without Issue, the Land shall goe to the Heirs of the Mother's side, and shall rather escheat than goe to the Heirs of the Father's side: but if I purchase a Copy-hold, and die without Issue, the Land shall goe to the Heirs of my Father's side; but if I have no Heirs of my Father's side, it shall goe to the Heirs of my Mother's side, rather than escheat.

If there be Father, Uncle and Son, and the Son purchaseth a Copy-hold in Fee, and dieth without Issue; the Uncle shall inherit, and not the Father, because an Inheritance may lineally descend, but not ascend.

If there be three Brothers, and the middle Brother purchaseth a Copy-hold in Fee, and dieth without Issue; the eldest shall inherit, because the worthiest of blond.

If there be two Coparteners or two Tenants in common of a Copy-hold, and one dieth having Issue; the Issue shall inherit, and not

not the other by the Survivorship : but otherwise it is of two Joynt-tenants. Should I give way to my Pen, and write of this Theme till I wanted matter to write on, I should make a large Volume in dilating this one Point; therefore I will contract my self, in-treating you to supply by your private cogitations what I have either willingly or unwittingly passed over in silence, onely take this Caveat by the way.

Though all Qualities necessarily incident to Estates at the Common Law are likewise incident to Copy-hold-estates; yet the Law is not so of collateral Qualities without special Custome; and therefore a Copy-hold shall be no Assets to the Heir. *Co. 4. fo. 22. a.*

A Descent of a Copy-hold shall not toll an Entry. A Surrender made by Tenant in tail (admit a Copy-hold may be intailed) or by a Baron of a Copy-hold, which he hath in right of his Wife, shall make no Discontinuance; because these are collateral Qualities, and not necessarily incident.

Thus much of the several Estates of Copy-holds, together with their several Qualities incident to their several Estates. I come now in the fifth place to examine how Copy-holders are to implead and be impleaded.

SECT.

S E C T. II.

A Copy-holder cannot in any Action real, or that savoureth of the Realty, or hath a dependance upon the Realty, implead or be impleaded in any other Court but in the Lord's Court for or concerning his Copy-hold : but in Actions that are meerly personal he may sue or be sued at the Common Law.

If a Copy-holder be ousted of his Copy-hold by a Stranger, he cannot implead him by the King's Writ, but by Plaint in the Lord's Court, and shall make Protestation to prosecute the Suit in the nature of an Assise of Novel Disseisin, of an Assise of Mortdancer, of a Formedon in the Descender, Reverter, or Remainder, or in the nature of any other Writ, as his cause shall require, and shall put in *Pleg. de prosequend.*

If a Copy-holder be ousted by the Lord, he cannot maintain an Assise at the Common Law, because he wanteth a Frank-tenant ; but he may have an Action of Trespass against him at the Common Law : for it is against reason, that the Lord should be Judge where he himself is a Party.

If in a Plaint in the Lord's Court touching the Title of a Copy-holder, the Lord giveth false Judgment, he cannot maintain a Writ of false Judgment; for then he should be restored to a Frank-tenant, where he lost none.

No Copy-holder of base Tenure in Ancient demesne can maintain a Writ of *Droit close*, or a Writ of *Monstraverant*; but Tenants of Frank-tenure in Ancient demesne can.

A Copy-holder that may cut down Timber-trees by Custome, by licence of the Lord maketh a Lease for years, the Lessee cutteth down Trees; the Copy-holder shall not have a Writ of Waste, but shall sue at the Lord's Court to punish this Waste.

If a Feme dowable by Custome of a Copy-hold by Plaint in the Lord's Court recovereth Dower and Damages, no Action of Debt lieth at the common Law for these Damages, because the Action, though it be in it self personal, yet it dependeth upon the Realty.

If a Copy-holder maketh a Lease by Copy for years, or by Deed with licence, an Action of Debt lieth for the Rent reserved upon either Lease at the Common Law: but I much doubt whether he can avow for the Rent either in the one or in the other, any more than

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Cestuy que use, before the Statute 27 H. 8. cap. 10. could avow for the Rent reserved by him upon a Lease for years, and yet he could maintain an Action of Debt for such a Rent, because an Action of Debt is grounded upon the Contract.

If a Stranger cut down Trees growing in the Copy-hold-ground, an Action of Treipass lieth at the Common Law against him: so doth it against the Lord, where he cutteth them down when by Custome they belong to the Tenant; because this is a meer personal Action, and Damages onely are to be recovered.

And if a Copy-holder without licence maketh a Lease for one year, or with licence maketh a Lease for many years, and the Lessee be ejected; he shall not sue in the Lord's Court by Plaint, but shall have an *Ejectio firma* at the Common Law, because he hath not a Customary Estate by Copy, but a warrantable Estate by the rules of the Common Law. Thus much of the manner how Copy-holders are to implead and be impleaded.

SECT. LII.

I Come now, in the sixth place, to shew under what Statutes Copy-holders are comprehended. Copy-holders are comprehended under Statute, either by express limitation in precise words, or by a secret implication upon general words.

By express limitation in precise words: As by the Statute of 1 R. 3. cap. 4. it is expressly provided, that a Copy-holder, having Copy-hold-Land to the yearly value of twenty six shillings and six pence above all charges, may be impannelled upon a Jury as well as he that hath twenty shillings *per annum* of Freehold-Land.

So by the Statute of 1 E. 6. cap. 14. it is expressly provided, that upon the Dissolution of Abbies and Monasteries Copy-holds should continue as they did before the Statute, and should fall into the King's hands.

So by the Statute of 2 E. 6. cap. 8. it is expressly provided, that the Interest of a Copy-hold should be preserved, notwithstanding it be not found by Office after the decease of the King's Tenant.

So by the Statute of 1 Mar. cap. 12. it is expressly provided, that if any Copy-holder,
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being

being Yeoman, Artificer, Husbandman, or Labourer, and being of the age of eighteen or more, under the age of sixty, not sick, impotent, lame, maimed, nor having any other just or reasonable cause of excuse, upon request made by any man in Authority, refuseth to aid Justices in suppressing of Riotous persons; that then immediately he shall forfeit his Copy-hold to the Lord of whom it is held during the Copy-holder's natural life.

So by the Statute of 5 *Eliz. cap. 14.* it is expressly provided, that the forging of a Court-Roll, to the intent to defraud a Copy-holder, shall be as well punishable as the forging any other Charter, Deed, or Writing sealed, whereby to defeat a Copy-holder or Free-holder.

So by the Statute of 13 *Eliz. cap. 7.* it is expressly provided, that the Copy-hold-Land as well as the Free-hold-Land of a Bankrupt shall be sold for the satisfying of the Creditor.

So by the Statute of 14 *Eliz. cap. 6.* it is expressly provided, that if any of the Queen's Subjects goeth beyond the Seas without Licence, that then the Queen shall not only take the ordinary Profits of the Fugitives Copy-hold-Land as they arise, but shall let, set, and make Grants by Copy, and usual Wood-

sales,

sales, and other things, to all intents and purposes as a Tenant *pro term. durante vita* may doe.

So by the Statute of 35 *Eliz. cap. 2.* it is expressly provided, that if any person or persons being convicted of Recusancy repair not home to their usual place of Abode, not removing from thence above five miles distance, that then any person or persons thus offending shall not onely forfeit their Free-hold-Land to the Queen, but withall their Copy-hold-Land to the Lord or Lords of whom it is holden.

Thus have I shewed in brief under what Statutes Copy-holders are comprehended by expresse limitation in precise words. Now I will shew you as briefly as I can under what Statutes they are comprehended by secret implication upon general words.

SECT. LIII.

SOME hold that all Statutes that speak generally of Tenants extend to Tenants by Copy: but it is much to be feared that we shall wander from the Truth, if we give credit to this conceit; for if we peruse the Statutes, we shall meet with an infinite number of them that speak generally of Tenants,

and yet touch not Tenants by Copy : wherefore not giving way to this Opinion , as being erroneous , I will set you down an infallible Rule, which will truly direct you in the exposition of the general words in Statutes ; and that is thus.

When an Act in parliament altereth the Service , Tenure or Interest of the Land , or other thing in prejudice of the Lord , or of the Custome of the Manor , or in prejudice of the Tenant, there the general words of such an Act in Parliament extend not to the Copy-hold : but when an Act is generally made for the good of the Commonwealth, and no prejudice may accrue by reason of the Alteration of any Interest, Service, Tenure or Custome of the Manor, there usually Copy-holds are within the general purview of such Acts.

The Statute of *Westm. 2. cap. 1.* of Intails extendeth not to Copy-holds , because it would be prejudicial to the Lord ; for by this means the Tenure is altered : for the Donee in tail , without any special Reservation , ought to hold of the Donor by the same Service that the Donor holdeth over. Besides, the words of the Statute are, *Quod voluntas Donator, in charta Domini sui manifeste expressa de cetero observetur* : which proveth that

that the intent of the Statute was that no Hereditament should be intailed within this Statute, but such an one as either was given, or at least may be given, by Charter of Deed; but Copy-holds are no such Hereditaments, and therefore not within the body of the Act. Yet it is holden, that Custome with the co-operation of the Statute will make an Estate-tail.

The Statute of *W. 2. cap. 20.* which giveth the *Elegit*, extendeth not to Copy-hold, because it would be prejudicial to the Lord, and a breach of the Custome, that any Stranger should have Interest in the Lands holden by Copy, without the Admittance and ordinary Allowance of the Lord.

The Statute of *16 R. 2. cap. 5.* which maketh it a Forfeiture of Lands, Tenements and Hereditaments to the Purchasor of Excommunication, Bulls, &c. in the Court of *Rome* against the King, &c. extendeth not to Copy-hold; because it would be prejudicial to the Lord to have the King so far interested in his Copy-hold without his consent.

The Statute of *2 H. 5. cap. 7.* of Hereticks extends not to Copy-holds; for though the Lord of a Manor is yearly to receive a benefit, in having the Lands after the year

and the day forfeited unto him ; yet because the King is a sharer in this Forfeiture, therefore Lands by Copy are not comprehended under the general words : besides, the Statute speaketh of the King's having *Annum, diem & vastum* of these Lands forfeited for Herefie, as in Lands forfeited for Felony ; whereby it appeareth that the meaning of the Statute is, that such Lands onely should be forfeited in which the King by the ordinary course of the Law should have *Annum, diem & vastum*, if the Tenant of them had committed Felony ; but such Lands are not Lands by Copy, for if a Copy-holder committeth Felony, his Copyhold is presently forfeited to the Lord. Therefore Copy-holds are out of the general purview of this Statute.

SECT. LIV.

THE Statute of 27 *H. 8. cap. 10.* of Uses toucheth not Copy-holds, because the transmutation of Possession by the sole operation of the Statute, without allowance of the Lord or the Agreement of the Tenant, would tend to the prejudice both of the Lord and of the Tenant : and the Branch of the same Statute which speaketh of Joyntures toucheth not Copy-holds, because Dowers of Copy-holds
are

are warranted by special Custome onely, and not by the Common Law, or by the general Custome,

The Statute of 31 H. 8. cap. 1. and 32 H. 8. cap. 32. by which Joynt-tenants and Tenants in Common are compellable to make Partition by a Writ *De partitione facienda* as Coparteners at the Common Law, touch not Copy-holds; because this alteration of the Tenure without the Lord's consent may sound to the prejudice of the Lord.

The Statute of 32 H. 8. cap. 28. which confirmeth Leases for 21 years or three Lives made by Tenants in tail, or by the Husband and Wife of the Lands of the Wife, toucheth not Copy-hold; for the Statute speaketh of Leases made by Deed onely: so that the intent of the Statute is to warrant the Leasing of such Lands onely as are grantable by Deed, but such are not Copy-hold-Lands: for though they may by Licence of the Lord be demised by Indenture, yet in their own name they are demisable onely by Copy, and therefore out of the general purview of the Statute. For the same reason the same Statute cap. 34. which giveth an Entry to the Grantee of a Reversion upon the breach of a Condition by the particular Tenant, toucheth not Copy-holds.

SECT. LV.

THE Statute of 17 E. 2. *cap.* 10. which giveth the Wardships of Idiots Land unto the King, toucheth not the Idiots Copy-hold; for thereby great prejudice would accrue to the Lord.

But the Statute of *Merton*, *cap.* 1. which giveth Damages to a Feme upon a Recovery in a Writ of Dower, where the Baron dieth seised, extendeth to Copy-hold.

So that the Statute of *Westm.* 2. *cap.* 3. and the three several Branches of the same Statute, 1. the one, which giveth the *Cui in vita* upon a Discontinuance made by the Baron, 2. the second, which giveth the Receit unto the Feme upon the Baron's refusal to defend the Wife's Title, 3. and the third, which giveth a *Quod ei deforceat* to particular Tenants, extends to Copy-hold.

So that the Statute of 31 H. 8 *cap.* 13. of Monaster. which provideth for the avoidance of doubling of Estates, and the Statute 32 H. 8. *cap.* 9. against Champerty, and buying of litigious Titles, and *cap.* 28. which giveth an Entry in lieu of a *Cui in vita*, extend all to Copy-holds; because these

these Statutes are beneficial to the Commonwealth, and not at all prejudicial to the Lord in the alteration of Tenure, Estate, Service, &c.

So the Statute of 4 H. 7. cap. 24. of Fines extendeth to Copy-holds; for if a Copy-holder be disseised, and the Disseisor levieth a Fine with Proclamations, and five years pass without any Claim made, this is a Bar both to the Lord and to the Copy-holder.

So if a Copy-holder make a Feoffment in Fee, and the Feoffee levieth a Fine with proclamation, and five years pass, the Lord is barred: but if a Copy-holder levy a Fine, and five years pass, the Lord is not barred, for the Fine levied, the Copy-hold, having no Frank-tenant, is utterly void. And whereas it hath been doubted that this Statute should not extend to Copy-hold, but the Lord should hereby receive grand

Co. 4 fr. 105. 1.

prejudice; for he should not onely lose the Fines upon Alienations or Descents, and the benefit of Forfeiture, but should withall be in hazard to be barred of his Frank-tenant and Inheritance: To that I answer; If the Lord receive any such prejudice, it is through his own default, for not making Claim, for in regard of the privity in Estate that is between him and the

the Copy-holder he may make Claim as well as the Copy-holder himself: *Et vigilantibus, non dormientibus, fura subveniunt.*

Thus have I shewed under what Statutes Copy-holds are comprehended. I come now in the seventh place to speak of Fines.

SECT. LVI.

A *Fine* is a summe of money paid to the Lord of the Manor for an Income into any Lands or Tenements. In some Manors Fines are certain, in some incertain.

By special Custome Copy-holders are to pay Fines upon Licences granted unto them to demise by Indenture; but by general Custome they are to pay Fines onely upon Admittances.

If the Lord having a Copy-hold by Escheat, Forfeiture, or other means, maketh a voluntary Admittance, a Fine is due unto the Lord.

If a Copy-holder surrendreth to the Use of a Stranger, and the Lord admitteth, a Fine is due to the Lord.

So if a Copy-hold descendeth, and the Lord admitteth the Heir, where by the Custome of the Manor the Wife is to have Dower, and the Husband is to be Tenant by
the

the curtesie of a Copy-hold ; either of them shall be admitted, and shall pay a Fine to the Lord.

If a Copy-hold be granted *durante vitâ*, and the Grantee dieth, living *Cestuy que vie*, and a Stranger entreth as a general Occupant ; he shall be admitted, and shall pay a Fine.

And so if a Copy-hold be granted to one and his Heirs *durante vitâ*, and the Grantee dieth, and his Heir entreth as a special Occupant, where by the Custome of the Manor a Copy-hold may be extended ; upon the Ex- tent the party shall be admitted, and shall pay a Fine.

Where, by the Custome of the Manor, the Bailiff of the Manor is to have the Wardship of the Copy-hold-Heir being under the age of fourteen ; such a Guardian shall neither be admitted, nor pay a Fine, because he is but a Partner of the Profits, and that not in his own right, but in the right of him to whom he is Guardian.

If the Copy-hold-Lands of a Bankrupt be sold according to the Statute of the 13 Eliz. cap. 7. the Vendee shall be admitted, and pay a Fine.

If a Villian purchaseth a Copy-hold, the Lord of the Villain may enter and seise it, and the

the Lord of the Manor shall admit him, and have a Fine.

If a Copy-hold be granted upon Condition, and the Condition be broken, and the Grantor entreth, he shall not be admitted, neither pay a Fine; because upon the breach of the Condition and the Entry, he is to all intents in *statu quo prius*, as if no Grant at all had been made.

If a Copy-holder in Fee surrendreth for life, reserving the Reversion, and the Lessee for life dieth; the Copy-holder shall not be admitted to his Reversion, neither shall he pay a Fine, because the Reversion was never out of him.

If a Copy-holder be disseised, and then entreth upon the Disseisor, or recovereth by Plaint in the nature of an Assise, he shall not be admitted, neither shall he pay a Fine; for he continueth still Tenant by Copy, notwithstanding the Disseisin: but where by a Plaint a Copy-hold is recovered upon the accruer of a new Title, where he that recovereth was never admitted nor paid Fine; there upon his Recovery an Admittance is requisite, and a Fine is due: as if a Copy-holder dieth seised, a Stranger abateth, and the Heir recovereth by Plaint in the nature of an Assise of *Mortdancesfor*, upon this Recovery

very he shall be admitted, and pay a Fine.

If I take a Wife with a Copy-hold in Fee, though by this Inter-marriage there accruieth a present Interest to me; yet because I am seised not *jure proprio*, but *jure alieno*, therefore I shall not be admitted, neither shall I pay a Fine.

The same Law is, if she be a Termor of a Copy-hold: for though the Term by the Inter-marriage be so vested in me that I may dispose of it without controul; yet because before Disposer I am possessed of it but in the right of my Wife, therefore I shall neither be admitted, nor pay a Fine.

Vid. Plowden Com. 418. b.

If a Copy-hold be surrendered for life, the Remainder to a Stranger; though the Admittance of Tenant for life be sufficient to invest the Estate in him in the Remainder, yet upon the death of Tenant for life, he in the Remainder shall be admitted, and pay a Fine.

So if a Copy-hold be granted to three *habend. successive*, where by Custom Succession is in force; if any one dieth, he that next succeedeth shall be admitted, and pay a Fine.

If two Copartners or Tenants in common of a Copy-hold be, and the one dieth, and the other hath all by Descent; he shall be

be admitted, and shall pay a Fine. But if two Joynt-tenants be of a Copy-hold, and one dieth; the other shall have all by the Survivorship without Admittance, or paying Fine, because Joynt-tenants to all intents and purposes are seised *per my & per con.*

If two several Copy-holders joyn in a Grant of their Copy-hold by one Copy; or if one Copy-holder, having several Copy-holds, granteth them by one Copy; yet the Grantee shall pay several Fines, for they shall inure as several Grants.

But if two Joynt-tenants, two Tenants in common, or Tenant for life and he in the Remainder, joyn in the Grant of a Copy-hold; one Fine onely is due, and it shall inure as one Grant onely: so if a Surrender be made, and after a common Recovery is had by Plaint in the nature of a Writ of Entry *in le post*, for the better Assurance, one Fine onely shall be paid.

And thus much of Fines. I come now in the next place to *Forfeitures*; wherein I will chiefly rely upon these four Points.

1. What Acts amount to a Forfeiture,
2. What Persons are able to forfeit.
3. What Persons are able to take benefit of a Forfeiture.

4. What

4. What Acts amount to a Confirmation of an Estate forfeit.

SECT. LVII.

OF Acts which amount to Forfeiture, some are Forfeits *eo instante* that they are committed, some are not Forfeits till Presentment. Offences which are apparent and notorious, of which the Lord by common presumption cannot chuse but have notice, are Forfeitures *eo instante* that they are committed: as if by special Custome, upon the Descent of any Copy-hold of Inheritance, the Heir is tied upon three solemn Proclamations, made at three several Courts, to come in and be admitted to his Copy-hold; if he faileth to come, in this Failer is a Forfeiture *ipso facto*.

So if a Copy-holder be sufficiently warned to appear, and he faileth; this is a Forfeiture *ipso facto*.

But if he be hindred by sickness, or by overflowing of waters, or if he be much in Debt, and fear to be arrested, or if he be a Bankrupt, and keepeth his house; then his Default is no Forfeiture.

If a Copy-holder in the Court be called and summoned to be sworn of the Homage, and

refuseth ; this is a Forfeiture *ipso facto*.

So if a Copy-holder be sworn of the Homage, and then refuseth to present the Articles according to his Oath ; this is a Forfeiture *ipso facto*.

So if a Copy-holder will swear in Court that he is none of the Lord's Copy-holder, this is a Forfeiture *ipso facto*.

But if a Copy-holder in presence of the Court speaketh unreverent words of the Lord, as that the Lord exacteth and extorteth unreasonable Fines and undue Services ; this is fineable onely, but no Forfeiture ; and if he saith in Court, that he will devise a means no longer to be the Lord's Copy-holder, this is neither cause of Fine nor Forfeiture ; for peradventure the means that he intended was lawfull, viz. by passing away his Copy-hold. *Et ubi sensus verborum est multiplex, verba semper sunt accipienda in meliori sensu.*

If the Steward sheweth a Court-Roll to a Copy-holder, to prove that his Land is holden by Copy, and the Copy-holder saith he is a Free-holder, and sheweth a Deed, pretending thereby to procure his Land to be Free-hold, and teareth in pieces the Court-Roll ; this is a Forfeiture *ipso facto*.

So if the Lord, upon the Admittance of a Copy-holder, the Fine by the Cu-
Co. 4. fo. 27. b. stome

Some of the Manor being certain, demandeth his Fine; and the Copy-holder denieth to pay it upon demand; this is a Forfeiture *ipso facto*.

So if a Copy-holder will sue a Replevin against the Lord, upon the Lord's lawful Distress for his Rent or Services; this is a Forfeiture *ipso facto*.

But if the Copy-holder be in doubt whether it be due or not, and therefore intreateth the Lord that the Homage may inquire the truth; this is no Forfeiture.

If the Fine by the Custome of the Manor be incertain, though a reasonable Fine be assessed, yet because no man can provide for an Incertainty, the Copy-holder is not bound to pay it presently upon demand, but shall have convenient time to discharge it, if the Lord limit no certain day for payment thereof; and if within convenient time it be not discharged, this is a Forfeiture without Presentment.

But if the Fine be unreasonable, though it be never paid, it is no Forfeiture; and it shall be determined by the opinion of the Justices before whom the matter dependeth, either upon a Demurrer, or in Evidence to the Jury, upon the confession or proof of the yearly value of the Land, whether the Fine be reason-

M. able

nable or not: for if the Lords might affesse unreasonable Fines at their pleasures, then most Estates by Copy, which are a great part of the Kingdome, and which have continued time out of mind, might now at the will of the Lords be defeated and destroyed, which would be very inconvenient.

If the Lord demandeth his Rent, and the Copy-holder denieth to pay it; this is a Forfeiture *ipso facto*.

So if the Copy-holder saith, that he wanteth money to discharge the Rent, and therefore importuneth the Lord to forbear until he be better provided; unless the Lord giveth his consent, this Non-payment is a Forfeiture *ipso facto*.

For a Copy-holder, knowing his day of payment, is to provide against the day. But if the Lord cometh upon the Copy-holders Ground, and demandeth his Rent, and neither the Copy-holder himself, nor any other by his appointment, is there present to answer their demand, though this be a Denial in Law of the Rent, yet this is no Forfeiture.

But if the Lord continueth in making demand upon the Ground, and the Copy-holder is still absent; this continual Denial in Law amounteth to a denial in fact, and maketh the Copy-holder's Estate subject to a Forfeiture without Presentment.

If

If a Copy-holder for life suffereth a Recovery by Plaintiff in the Lord's Court as Copyhold of the Inheritance, this is a Forfeiture *ipso facto*.

But if he surrender in Fee, this is no Forfeiture, because it did not pass by Livery.

If a Copy-holder committeth Waste voluntary or permissive, this is a Forfeiture *ipso facto*.

Voluntary : As if he plucketh down any ancient-built House, or if he buildeth any new House, and then pulleth it down again ; or if he ploweth Meadow, so that thereby the Ground is made worse ; or loppeth the Trees, or selleth the Lopping ; or if he cutteth down any fruit-trees for Fuel, having other wood sufficient; these and the like voluntary Wastes are forfeitures *ipso facto*.

Permissive : As if he suffereth his House to decay or fall to ground for want of necessary Reparations ; or if he suffereth his Meadow for want of mending his Banks to be surrounded, so that it becomes Rushy, or worth nothing ; or his Arable ground so to be surrounded, that it is become unprofitable; these and the like permissive Wastes are Forfeitures *ipso facto*.

And thus much of Acts which are Forfeitures *eo instante* that they are committed. A

word of those Acts which are said not Forfeitures till Presentment.

S E C T. LVIII.

AND such are those Offences which by common presumption the Lord cannot of himself have notice of, without notice given; as if a Copy-holder committeth Felony or Treason.

So if a Copy-holder be Out-lawed or Excommunicate; that the Lord may have the Profits of his Copy-hold-Land, a Presentment is necessary.

So if a Copy-holder goeth about in any other Court to intitle any other Lord unto his Copy-hold, or if he alieneth by Deed; these and the like ought to be presented.

If a Copy-holder maketh a Bargain and sale of his Copy-hold, and it is not inrolled according to the Statute; this is no Forfeiture, no more than a Feoffment without Livery; because nothing passeth.

So if a Copy-holder maketh a Feoffment of all his Lands in *Dale*, and maketh Livery in his Charter-Lands; no part of his Copy-hold-Land is thereby forfeited: but if Livery be made in any part of the Copy-hold-Lands, all his Copy-hold-Lands are forfeited.

If

If a Copy-holder, by Deed of Bargain and sale inrolled according to the Statute, doth bargain and sell all his Lands in *Dale*, having both Copy-hold, and Free-hold, his Copy-hold is not thereby forfeited; for the Law will construe this to extend to his Free-hold only, rather than by any over-large construction make a Forfeiture in this kind.

And if a Copy-holder by Deed inrolled, bargaineth or selleth all his Copy-hold-Lands in *Dale*, or all his Lands in *Dale* generally, having no Free-hold-Lands; this is a Forfeiture.

Thus I have shewed you what Acts amount to a Forfeiture. Now I will shew you what Persons are able to forfeit.

SECT. LIX.

A Man *non sana memoria*, an Idiot or a Lunatick, though they be able to take a Copy-hold, yet they are unable to forfeit a Copy-hold, because they want common Reason, nay common Sense.

So an Infant that is under the age of fourteen is unable to forfeit his Copy-hold, because he wanteth Discretion; and till then he is to be in Ward to the next of his Kindred to whom the Inheritance cannot descend, or to

the Lord or the Bailiff of the Manor, as the Custome shall warrant.

So a Feme-covert, by any act she can do of her self, cannot possibly forfeit her Copyhold, because she is not *sui juris*, *sed sub potestate viri*: but if she do any act which amounteth to a Forfeiture by the consent of her Husband, this is in her a Forfeiture.

An infant at the age of Discretion may forfeit his Copyhold, not by Offences which proceed from Negligence or Ignorance, but by such as proceed from Contempt.

If an Infant come not in to be admitted, according to the Custome, at three solemn Proclamations made at three several Courts, or if he will suffer his Houses to go to ruine, or his Ground to be surrounded; these acts, favouring of Negligence onely, are no Forfeitures.

So if an Infant Copy-holder sueth a Replevin against the Lord upon a Distress lawfully taken, or if he alieneth by Deed, or the like; these acts, relishing of Ignorance onely, are no Forfeitures.

But if he denieth from time to time to pay the Lord the Rent, or committeth voluntary Waste, notwithstanding often warning given him by the Lord; these acts proceeding from Malice and Contempt, are Forfeitures:
and

and so if he committeth Felony or Treason.

If a Guardian of a Copy-holder committeth Waste, he shall forfeit the Wardship onely, not the Inheritance of the Copy-hold.

If *Custuy que use* of a Copy-hold committeth Waste, he shall not forfeit the Copy-hold.

If the Husband committeth Waste in Copy-hold-Lands which he hath in the right of his Wife; this is a Forfeiture of the Wife's Copy-hold. Co. 4. fo. 27. d.

But if a Stranger committeth Waste without the consent of the Husband; this is no Forfeiture, though the Wife consenteth.

If a Disseisor of a Copy-hold committeth Waste, this is no Forfeiture.

So if a Copy-hold be surrendered to the Use of *J S*, and before admittance *J S* committeth Waste; this is no Forfeiture, for by the same reason that he cannot grant before Admittance, he cannot forfeit before Admittance.

If two Joynt-tenants be of a Copy-hold, and one committeth Waste, he forfeiteth his part onely; for no man can forfeit more than he hath granted.

And therefore if there be Tenant for life with a Remainder over of a Copy-hold, and the Copy-holder for life purchaseth the Manor,

committeth WASTE, or doth any act which amounteth to the Extinguishment or the Forfeiture of a Copy-hold ; yet the Remainder is not hereby touched.

And so if a Copy-hold be granted to three *habend. successive*, where by the Custome of the Manor this word *successive* taketh place ; the first Copy-holder cannot prejudice the other two by any act he can do, no more than if a Copy-holder in Fee by Licence maketh a Lease for years by Deed, or without Licence by Copy, and either of these Lessees committeth WASTE, the Reversion is not hereby forfeited.

If I have two several Copy-holds by two several Copies, and I commit WASTE in one ; this is a Forfeiture of this one onely, and not of the other.

And so if I grant these several Copy-holds by one Copy, yet they continue several as they did before ; and the Forfeiture of the one is not the Forfeiture of the other.

The same Law is, if two several Copy-holds escheat to the Lord, and he re-granteth them again by one Copy.

And thus have I shewed what Persons are able to forfeit. I will now in a word shew what Persons are able to take benefit of a Forfeiture.

SECT.

SECT. LX.

Regularly it is true, that none can take benefit of a Forfeiture, but he that is Lord of the Manor at the time of the Forfeiture.

And therefore if a Copy-holder maketh a Feoffment, and then the Lord alieneth, neither the Grantor nor the Grantee can take benefit of this Forfeiture; for neither a Right of Entry nor a Right of Action can ever be transferred from one to another. And therefore if a Free-holder alieneth in Mortmain, and then the Lord granteth away his Seignior, neither the one nor the other can ever take benefit of this Forfeiture.

So if a Lessee for life committeth Waste, and then the Lessor granteth away the Reversion; this Waste is made dispensable.

But if Tenant for life be of a Manor, with Remainder over in Fee to a Stranger, if a Copy-holder committeth Waste, and then Tenant for life of the Manor dieth before Entry; yet he in Remainder may enter, for he had an Interest in the Manor at the time of the Forfeiture committed, though he could not enter by reason of the State in Tenant for life, which being determined, his Entry is now accrued unto him for the Forfeiture com-

committed in the life of Tenant for life.

And sometimes he that is neither Lord of the Manor at the time of the Forfeiture committed, nor ever after, shall take benefit of a Forfeiture.

As if the Lord of a Manor granteth a Copyhold in Fee, and then granteth the Frank-tenement or the Inheritance of this Copyhold to a Stranger; the Grantee, though no Lord of the Manor, nor able to keep any Co. 4. fo. 24. Court, shall take benefit of Forfeitures made by the Copy-holder; as if the Copy-holder do make a Feoffment, Lease, Waste, deny the Rent, &c.

Thus have I shewed what Persons are able to take benefit of a Forfeiture. I will now in one word shew what Acts amount to a Confirmation of an Estate forfeited.

SECT. LXI.

IF the Lord doth any thing whereby he doth Acknowledge him his Tenant after Forfeiture; this Acknowledgment amounteth to a Confirmation: as if he distraineth upon the Ground for Rent due after Forfeiture, or if he admitteth after the Forfeiture, or the like; these are Estoppels to the Lord, so that he can never enter, so the Lord have notice of such

such Forfeitures before any such act which may amount to a Confirmation be done. Yet some make this difference, that these Forfeitures onely which destroy not the Copy-hold are confirmable by subsequent Acknowledgment, and not those Forfeitures which tend to the destructions of a Copy-hold; as if the Copy-holder maketh a Feoffment, by this the Copy-holder is destroyed, and therefore no subsequent Acknowledgment of the Lord will ever save this fore.

And this shall suffice for Forfeitures. I come now, in the last place, to shew what Acts amount to the Extinguishment of a Copy-hold.

SECT. LXII.

WHeresoever a Copy-hold is become not demisable by Copy, either by the act of the Lord, by the act of the Law, or by the act of the Copy-holder himself, it is extinguished for ever.

By the act of *the Lord*: As if a Copy-holder escheateth, and the Lord granteth away any Estate by Deed, this is an Extinguishment. So if he maketh a Feoffment upon Condition, and then entreth Co. 4. fo. 31. for breach of the Condition; yet the Copy-hold is extinguished, because once not demisable. But

But if the Lord keepeth the Copy-hold-Lands for never so many years, or granteth at will; this destroys not the Copy-hold, because it continueth ever demisable by Copy.

By the act of *the Law*: As if the Copy-hold escheated be extended upon a Statute or Recognizance acknowledged by the Lord, or if the Feme of the Lord hath this Land assigned unto her for her Dower; although these impediments be by the act of the Law, yet because they are lawful, the Land can never after be granted by Copy.

By the act of *the Copy-holder himself*: As if he accepteth a Lease for years at the Common Law, either mediate or immediate from the Lord of the Copy-hold; this is an absolute Extinguishment.

But if he accepteth a Lease for years of the Manor, the Copy-holder by this hath not Continuance; but this is no Extinguishment, because the Land continueth still grantable by Copy.

If a Copy-holder with Licence make a Lease for years to a Stranger, or without Licence maketh a Lease for years to the Lord; the Copy-hold is not hereby extinguished, and yet it is not demisable by Copy.

So if a Copy-holder intermarrieth with a Feme Seignioresse; this is a Suspension onely

onely of the Copy-hold, no Extinguishment.

So if the interruption be torcious, as the Lord be disseised, and this Disseisor dieth seized; or if the Land be recovered by false Verdict, or erroneous Judgment, and after the Land is re-continued; it is not extinguished, but may be granted arere by Copy: for *Non valet impedimentum quod de jure non sortitur effectum; & quod contra Legem fit pro infecto habetur.*

And so I conclude with Copy-holders, wishing that there may ever be a perfect Union betwixt them and their Lords, that they may have a feeling of each others wrongs and injuries; that their so little Commonwealth, having all its Members knit together in compleat order, may flourish to the end.

F I N I S.

A
SUPPLEMENT

By way of
ADDITIONS to, & AMPLIFICA-
TIONS of the foregoing

Treatise,
CONCERNING
Copy-hold and Customary
ESTATES:

Wherein the Grounds laid down in
the said *Treatise* are made good and con-
firmed by several Resolutions and Judg-
ments given in the Courts of the Common Laws
of *England* in divers Cases.

L O N D O N,

Printed by E.-Fletcher, John Streater, and
Henry Twyford, Assignes of Richard Atkyns, and
Edward Atkyns, Esquires. 1673.

Cum gratia & privilegio Regiæ Majestatis.

STATEMENT

OF THE

PROCEEDINGS

OF THE

LEGISLATURE

OF THE

STATE OF

NEW YORK

IN THE

YEAR

1881

AND

1882

AS

RECORDED

IN THE



THE INTRODUCTION.



THE Learned Author of the before-going Book, intituled, *The Compleat Copy-holder*, having in a very compendious manner treated of the Original of *Manors*, and how constituted; and of their *Demefn Lands*, as also of the several *Tenancies* thereof, and of the nature of the *Services*, *Qualities*, and *Courts* incident and belonging thereunto; and (amongst the rest) of *Copy-holders*, *Copy-holds* and *Customary*
A *Estates*,

The Introduction.

Estates, and their *Tenures*, *Services* and *Customes*, distinguishing them from the other *Tenures* and *Services*; setting forth therein likewise the Antiquity and Original of *Copy-holds*, the *Services*, *Duties*, and other things incident to such *Tenure*; with divers *Customes*, *Prescriptions* and *Usages*, claimed by such *Copy-hold-Tenants*, together with the manner of *Grants* and *Estates* thereof, and how and in what manner they are either to be granted or accepted of: Now because the drift of the Authour of the said Book was (as I conceive) to speak more particularly of *Copy-hold* and *Customary Estates* than of the other *Tenures*; and therefore the Authour of the said Book hath therein laid down some general Grounds concerning the same, but hath not confirmed them either by *Judgments* or *Precedents* of the *Common Law*, which would have

The Introduction.

have more illustrated the same; and some things likewise concerning *Copy holds* and *Customary Lands* and *Estates* have been omitted by the said Authour worthy to be known by all Students and others whom the same may concern: therefore at the request of divers persons, by way of *Amplification* of what hath therein been formerly treated of by the said Authour, and by way of *Addition* of what therein hath been omitted, I have added what hereafter followeth by way of *Supplement* to the former Book; wherein I shall endeavour to contribute somewhat *de novo*, and to make good the former Grounds laid down in the said Book, and what shall be added thereunto, by several *Resolutions* and *Judgments* given in the Courts of the *Common Laws* of *England* in several Cases concerning the same.

The Introduction.

And therefore *Surrenders* (after a Grant thereof made) being one of the principal matters which do concern *Copy-holders* and their *Estates*, I shall first begin with them, and then proceed to other matters concerning *Copy-holders* and their *Customary Estates*.

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SECTION I.

What a Surrender of Copy-hold or Customary Estate is; to whom, and in what manner and place it is to be done; and who shall be said such a Tenant of a Copy-hold as may make such a Surrender.



Surrenders of Copy-hold-lands and Copy-holders are of two sorts; viz. Surrenders Actual, and Surrenders in Law.

An Actual Surrender, according to the Definition of Mr. Littleton, and the best Description of it, is a Copy-holder's yielding up of his Copy-hold-lands or Customary Estate into the hands of the Lord of the Manor, in the Court of the Manor, or unto his Bailiff, Reeve, or Steward, to such Uses and

A Supplement, concerning

for such Estates as are particularly mentioned in the Surrender it self, made by a Deed or Writing; or if it be by Word, in the presence of the Lord and Tenants in the Court of the Manor. And yet it hath been a great doubt and Question, whether of Copy-holds or Customary Estates, any words used to the Lord himself shall amount to make it a good Surrender.

Proofs.

Litt. 15. b.
Book of En-
tries, 131.
acc.

Vide Mr. Littleton, in his Chapter of Tenant by Copy, &c. fol. 15. Ad hanc Curiam venit A B, & sursumreddidit in eadem Curia in manus Domini, &c. unum Messuagium, &c. ad usum C D. & heredium suorum, &c.

But if the Surrender be made in Court into the hands of the Lord or his Steward, it must be to such a person or his Use who is *in esse* and capable of such a Surrender, or that may take Presenty by force of the Surrender; otherwise such Surrender, though it be an Actual Surrender made in the Court of the Manor to the Lord or Steward himself, is not good.

A Copy-holder in Fee surrendered his

his Copy-hold-lands into the hands of the Lord of the Manor, *Habendum* after his decease to the Use of an Infant in *Ventre sa mier*, and if the said Infant died within age, then to the Use of *J S* and his Heirs. In this Case these Points were Resolved. 1. If a Copy-holder in Fee doth surrender his Copy-hold-lands into the hands of the Lord, to the Use of himself and his Heirs, That in that Case, because the Limitation of the Use to him who had it before was void, the Surrender thereof to the Lord himself was also void.

H. 7 Jac.
B. R. Simpson and Southern's Case.
H. 17 Jac.
in B. R. Cambridge and Whitton's Case acc.

2. That the Surrender made to the Infant in *Ventre sa mier* was not good as an immediate Surrender, and to take effect immediately, as the intention of the Surrenderer was it should, because it was of a Free-hold, which could not begin at a day to come.

But yet *Quare*, If the Surrender be made into the hands of the Lord, to the Use of the right Heirs of the Surrenderer, if the Lands shall not continue in the hands of the Lord till the Death of the Copy-holder who made the Surrender, for the Court doubted of it, *Pasc. 30 Eliz.* in *Allen and Palmer's Case*.

Vid. P. 30
Eliz. Allen and Palmer's Case. Leon. Part 1. 101.

A Surrender being then by the Copy-holder

A Supplement, concerning

holder himself, in the Court of the Manor, to the Lord, of his Copy-hold or Customary Lands; it then, upon the very Act done, the Estate be in the Lord, or in the Surrenderer, or in whom it resteth, remaineth a Doubt. For Resolution thereof, I humbly conceive the Law to be, and so it hath been Resolved, That notwithstanding such a Surrender made, yet the Estate remaineth in the Copy-holder who surrendreth, and is not in the Lord, or in any other person whatsoever. But in case where the Copy-holder doth surrender his Copy-hold in the Court of the Manor to the Use of the Lord himself, (which he may doe) there, by such a Surrender, the Land is immediatly vested in the Lord without any other Act done or required, because the Lord cannot take a Surrender, as to make thereof an Admittance unto himself.

*Vid. Cro.
part 1. in
Erish and
Rive's Case,
acc.*

And to that purpose *Vide Erish and Rive's Case*, where it was Resolved, That if a Surrender be made by a Copy-holder of his Copy-hold-lands into the hands of the Steward of the Manor to the Use of the Steward himself, that Surrender is good without any farther Act, for the reason aforesaid.

Having

Having thus shewed what will be a good Surrender of Copy-hold or Customary Lands by an actual Surrender in the Court of the Lord of the Manor, I shall now consider

SECT. II.

Whether a Copy-hold may be said to be surrendered by any Act, Words, or Agreement, made betwixt the Lord and the Copy holder, or by the Copy-holder with a Stranger made in the Court, in the Presence of the Lord or his Steward.

I Do conceive generally, that no Act or Words of the Copy-holder can pass his Copy-hold in such a manner, as that the same shall be accounted to amount to a good Surrender of the same. But yet it rests upon a Difference.

*Vid. Leon.
1. part, 172.
Penruddock.
and New.
man's Case.*

Proofs.

If a Copy-holder bargain and sells his Copy-hold by Deed of bargain and Sale enrolled, though it be to the Lord of the Manor himself, it is void, and shall not amount to a Surrender.

If

If Tenant for life of Lands at the Common Law agrees with his Lessor, or him in the Reversion, that he shall have his Interest in the Land for the Rent of 20 s. *per annum*; this Agreement will not amount to a Surrender of his Land by the Common Law. *A fortiori*, If a Copyholder, or other Customary Tenant, shall say to his Lord, or other person in the Court of the Manor, I agree to surrender my Lands; these words will not be a present or an express Surrender, nor will they amount to so much as a Relinquishing of his Estate: for in truth it is not any thing in present, but an Act to be done *in futuro*: Like unto the Case put by *Wray* Chief Justice; *A* seised of the Manor of *D* demiseth the same Manor at will; that it is no Lease. No more in the other Case shall it be a Surrender, or a Relinquishing of his Copy-hold or Copy-hold-estate. But yet notwithstanding it will be agreed that in some cases an express and particular Agreement made by a Copyholder with the Lord of the Manor for or concerning his Copy-hold-lands will amount to a Surrender of the same.

The Case was, That the Lord of a Manor, pretending that a Copyholder had

Tr. 31 Eliz.
in B. R.
Sweeper and
Randal's
Case, Leon.
2 part, 178.

Copy-hold and Customary Estates.

had forfeited his Copy-hold-lands, entred into a Communication with the Copy-holder concerning the same : Upon the Communication thereof had betwixt them, it was agreed, that the Copy-holder should pay unto the Lord the summe of 10 l, which he paid accordingly ; and that in consideration thereof, the Copy-holder should have Election, whether he would have the Land assured unto him by Copy or by Bill , for the life of him and his Wife, or *durante viduitate* of the Wife: who made his Election to have the Land by Bill. It was the opinion of the Justices in that Case, That this Agreement was a good Surrender of the Lands, and a good Estate thereupon vested in the Wife for her life.

M. 32 Eliz.
in Co. B.
Collam and
Sir Hugh
Portman's
Case, Leon:
1 part, 191.

A Copy-holder in Fee came into the Court of the Lord of the Manor, and took a new Estate of his Copy-hold-lands from the Lord to himself for life, and afterwards to his Wife for life, and after to his Son for life. It was a Question, whether this Act of the Copy-holder was the giving up and the relinquishing of his Estate of Inheritance in his Copy-hold, and did amount to a Surrender of his old Estate therein. It was agreed

M. 13 Jac.
B.R. Berfield
and Adams
Case.

Vid. 29 *Eliz.*
Co. 2. part,
Lane's Case.

agreed in this Case, That if a Copy-holder of inheritance takes a Lease by Indenture for years of the Lord of his Copy-hold, that by that Act of his his Inheritance in his Copy-hold is gone and determined. But it seemed to be the better opinion of the Court, That although that this taking of a new Estate shall imply a Surrender, and be accounted as to some purpose to amount to a Surrender; yet in the judgment of Law it shall be but as a Surrender to his Use for life, and after to his Wife and Son for their several lives, and that still the Inheritance of the Copy-hold remaines in him. But *Quare* this Case, For that *H. 36 Eliz. in Co. B. Rot. 2640.* in *Adams* and *Shepherd's Case*, it seemeth to be adjudged to the contrary.

Vid. Colman
and *Bedill's*
Case, Anderson's
Reports 199.
acc.

A Copy-holder said to his Lord, that he would not hold his Land longer by Copy, but by a Bill under the Lord's hand for his life, who made him such a Bill, which the Copy-holder accepted of. It was agreed by the Justices in that Case, That thereby his Copy-hold was determined.

SECT. III.

Of Surrenders out of Court; and where Surrenders to the Steward, Deputy-steward, or into the hands of Tenants of the Manor, out of Court, shall be good, where not.

BY the general Custome of the Realm a Copy-holder may surrender his Lands in the Court of the Lord of the Manor, or out of Court, to the Lord, by the hands of Tenants of the Manor : But a Surrender out of Court to the Lord, or by the hands of Tenants of the Manor, or of the Bailiff or Reeve, is not good without a special Custome.

The Lord hath such an absolute Interest in his Manor, that he may hold a Court within his Manor at what time he pleaseth : But he is not compellable by his Copy-holder to hold or call a Court to accept of a Surrender. But if he doth accept of such a Surrender of his Copy-holder out of Court, the same is good, whether it be to his own Use, or to the Use of other persons. And as the Lord may himself accept of a Surrender out of

of Court, so likewise may the Lord himself grant new Copies of the Lands out of Court, and such Grants shall be good. But the Lord himself cannot hold his own Court for any of the purposes aforesaid. But the Lord himself may give authority unto others to take Surrenders to the Use of others out of Court; and so may his Steward or Under-steward give Conditions to others to take the like Surrenders out of Court to other Uses, which Conditions shall be in the nature of a *Dedimus potestatem*. And so it was Resolved in a Case out of *Ireland*, referred to the Judges of *England*, to certify their opinions therein; where the Case was, The Steward of the Court of a Manor in *Ireland*, being in *England*, sent a Writ in the nature of a *Dedimus potestatem* to one who was in *Ireland*, to take a Surrender there of Copy-hold-lands: and the opinion of the Judges here, to whom the Case was referred to advise and certify their opinions, was, That such a Surrender taken by *Dedimus* was good enough. But note, that in such case it must be intended, that such giving power to take a Surrender, if it be to be done, it must be alledged to be done either by Prescription or Custom.

Some : for that Surrenders generally taken out of Court must be by Custome.

Proofs.

If the Under-steward hold a Court within the Manor, and grants Copies by Court-Roll, without the authority of the Lord or of the high Steward, the Grants are good. But contrary it is, if he doe it out of Court, as it seemeth. And there it is a *Quare*, if the high Steward out of Court may grant Lands by Copy. But it is clearly holden, that he cannot admit a Copy-holder upon a Surrender out of Court, without a special authority from the Lord so to doe.

2 E. 6. Br.
Tenant per
Copy. 26.

A Deputy-steward may take a Surrender out of Court, if the Office be granted to the Steward and his sufficient Deputies, or to be exercised by him and his sufficient Deputies; as it was Resolved 19 Eliz. in the Court of *Common-Pleas*.

19 Eliz. in
Co. B.

The Lord of a Manor may retain a Steward by Word, and such a Retainer shall be good untill he be discharged, and such a Steward may take a Surrender out of Court, as it is holden in *Coke* 4. part, in the Lady *Holcroft's* Case. And so was it Resolved Tr. 41 Eliz. in *Harris and Jaye's*

8 Eliz. Dyer
248.

Co. 4. part,
Holcroft's
Case.

*Tr. 31 Eliz.
C. B. Bl-
grave and
Wood's Case,
Godb. 142.*

Jaye's Case in B. R. But *Quare* of the first Point. For that *Tr. 31 Eliz. in Co. B.* in *Blagrove* and *Wood's Case*, the opinion of the Justices was, That a Surrender to a Steward who was by word onely; out of Court, was not good.

*M. 17 Eliz.
in C. B. by
Dyer and
Mounson.*

In *17 Eliz. in Co. B.* it was said by *Dyer* and *Mounson*, That without a Prescription a Surrender of Copy-hold-land could not be out of Court, nor an Admittance out of Court, neither to the Lord himself nor to his Steward. But in divers places it is used by Custome so to be. And then and thereupon the doing of Fealty and the paying of the Lord's Fine shall be presented by the Homage to be done at the next Court. And all these things they said are to be done by Custome. And in that Case it was said by the Lord *Dyer*, That a Surrender out of Court might be to the Lord himself, to go by the way of Extinguishment.

A Copy-holder in Fee did, according to the Custome of the Manor, surrender his Copy-hold-lands into the hands of two Tenants; but the Surrender was to the Use of *J S*, to take effect immediately after his death. In this case it was Resolved, That as unto the Surrender into the hands of

of two Tenants, that might be good, although it was out of Court, by Custome. But because in that Case the Surrender was unto the Use of *J.S.*, to take effect immediately after the death of the Surrenderor, and a Free-hold cannot begin *in futuro*, or at a day to come, by the Common Law, and for that the Estates of Copy-holders shall be directed according to the Rules of the Common Law; for that cause onely the Surrender was holden to be void.

But although a Surrender out of Court may be good into the hands of Tenants of the Manor by Custome; yet until such Surrender be presented by them in the Court of the Lord of the Manor, the Estate of the Lands doth remain in the Surrenderor, and nothing passeth thereby.

A Copy-holder in Fee did surrender into the hands of two Tenants, according to the Custome, to the Use of *A* and *B*, who thereupon entred into and upon the Lands, and paid the Rent to the Lord; but before any Court was kept for the Manor, the Tenants to whom the Surrender was made, as also the Copy-holder the Surrenderor, all of them died, and thereupon the Heir of the Copy-holder

*M. 14 Jac.
B.R. Frof-
well and
Welshe's
Case, Bridg-
man 52.*

B

Sur-

Surrenderor entred upon the said *A* and *B*, and made a Lease for years of the Lands, which Lease was warranted by the Custome. In that Case it was Resolved, That the Lease for years was well made, because that before such time that the Presentment was made in Court of the Surrender, the Interest of the Copy-holder did remain in the Surrenderor, and his Right descended unto and upon his Heir, and he might take and receive the Rents and Profits of the Lands; for that no Person can have a Copy-hold, or a Copyhold-Estate, but such a person who comes into the same by the Custome of the Manor, *viz.* by Admittance of the Lord, which in this Case *A* and *B* did not do. But in that Case it was doubted by the Justices, but not Resolved, Whether the Acceptance of the Rent by the Lord at the hands of the said *A* and *B* did amount to an Admittance or not.

*M. 9 Jac.
Cro. 2. part,
Porter and
Porter's
Case.*

There were two Joynt-tenants in Fee of Lands which were holden by Copy. One of them, according to the Custome, surrendred into the hands of two Tenants to the Use of his last Will, and afterwards he made his Will, and thereby devised the Lands. In that Case it was holden by

by the Justices, That because the said Surrender was presented by the Tenants in the Court of the Lord, that the said Surrender should bind the Survivor; for that it shall have a relation to the first time of the Surrender. But if in that case the Copy-holder who made the Surrender had died before the same had been presented, then the Copy-hold had survived to the surviving Joynt-tenant.

Two Coparcenors, Copy-holders, were in possession; the one did surrender her Reversion in the Moyety after her decease. It was adjudged a void Surrender, because a Free-hold could not commence *in futuro*, as well of Copy-hold-lands as of Free-hold-lands.

*P. 10 Jac.
B.R. Godb.
141.*

A Copy-holder surrendered a Messuage and 20 Acres of Lands into the hands of two Tenants out of Court, to the Use of *J S* and his Heirs, upon Condition, that if he paid *J S* 100 *l.* before such a day, the Surrender to be void. Before the day of payment he surrendered one Acre, parcel of the 20 Acres, unto *J D* and his Heirs, and afterwards he performed the Condition by paying the 100 *l.* and afterwards in Court he surrendered the said Messuage and 20 Acres of Lands in-

*M. 8 Jac. in
B.R. Cro. 3.
part, Bur-
goyne and
Spurling's
Case.*

to the hands of the Steward, to the Use of *JN* and his Heirs. It was found by the Jurours that the first Surrender made to *JS* was never presented, but the two last Surrenders were presented. In this Case it was Resolved, That by the Conditional Surrender nothing passed, until it was presented; but the Interest, Right and Possession remained in the Copy-holder who made the Surrender, so as he might transfer it to whom he thought good. For although it was a Surrender into the hands of Tenants, and so according to the manner of the Surrender the same was good by the Custome; yet because the said Surrender into the hands of Tenants was but an Inchoation of the Case to whose Use the Surrender was made, which had no farther perfection or prosecution, but became void by the performance of the Condition, the first of the two last Surrenders presented, viz. the Surrender to the Use of *JD* and his Heirs, stood good, and the last Surrender to the Use of *JN* and his Heirs took no effect.

*Coke 9. part,
Comb's
Case.*

A Copy-holder in Fee made a Letter of Attorney to two Tenants of the Manor, to surrender his Copy-hold out of Court

Court to the use of *J S* and his Heirs : They surrendred the same accordingly, and at the next Court brought in the Surrender into Court, (but no Custome was found to warrant such a Surrender.) Notwithstanding in that Case it was Resolved, 1. That it was a good Surrender, because he might do it *de communi jure* without alledging any Custome. 2. When the Tenants shewed the same in Court, and the Authority which was given to make the Surrender, all which they had done was Resolved to be good, and legally done.

SECT. IV.

Where, although Surrenders are made to the Lord or to Tenants out of Court by Custome, yet nothing passeth out of the Copy-holder before Admittance : And what shall be a good Admittance in such case, what not.

Admittance is the life and perfecti-
on of the Copy-holder's Estate,
and before Admittance the Tenant is not
a perfect Copy-holder.

Proofs.

M. 23 Car.
B.R. Baker
and Den-
kam's Case.

The Custome of a Manor was, That a Copy-holder might surrender his Copy-hold out of Court to the Use of another; the party to whose Use it was, to be admitted at the next Court. Such a Surrender was made, but before the next Court *Cestuy que use* died, and so was not admitted. It was Resolved in this Case, That he was not a Copy-holder within the Custome; for by the Surrender before Admittance the Surrenderee hath no possession, and the Heir is in by Discent, and holds by the Copy of his Ancestor, and so the *Cestuy que use* is not a perfect nor compleat Copy-holder. And it may be compared to the Case where a man makes a Feoffment in Fee of Lands, and makes Livery within the View; it is no perfect Livery till he doth enter into the Lands, but the Feoffor may punish a Trespass there done in the interim, for it is but *inchoatum* until he enter. And so it is in case of a Copy-holder; the Surrender is but *quasi inchoatum*, as before, till he be admitted to the Copy-hold. *Vid. Froswel's Case* before.

In

In 26 *Eliz.* the Question was, Whether the Copy-holder might have an Action upon the Case against the Lord for not holding his Court, and not admitting of him to whom a Surrender was made according to the Custome of the Manor. It was Resolved in that Case, That the Copy-holder himself might have the Action. But in that Case it was Resolved, That he to whom the Surrender was made, until Admittance, by force of the Surrender had nothing; it was onely an Act begun, and not perfected; and therefore in such case he could not maintain the Action of the Lord for not admitting of him.

26 *Eliz. Gal-*
loway's Case
vouched in
Bulstr. 3.
part, 217.

A Surrender of a Copy-hold is like to the Induction into a Benefice: before Induction there is no Possession; so before Admittance there is no Possession.

A Copy-holder, according to the Custom, did surrender out of Court into the hands of Tenants to the Use of *J S* and his Heirs; which Surrender was delivered into the Court by the said Tenants and there presented; which was accepted of by the Steward of the Manor, and an Entry made thereof in the Court-Roll, and a Copy of the Surrender was

M. 12 Jac.
Robinson and
Green's Case,
Bridgman
82, 83.
Bulstr. 3.
part, 238.
acc.

delivered unto *JS*; and in the Copy it was, *viz. Compertum est per Homagium*, that the Surrender was to *JS* and his Heirs. It was the opinion of the Court in this Case, That none of these colourable things did imply a perfect Admittance to the Copy-hold. For 1. The Acceptance of the Presentment by the Steward from the Homage was no more than what he was bounden to do as being Judge of the Court. 2. The Entry of it in the Roll was but an Office of Duty, being but an Evidence for the Lord, as also for him to whose Use the Surrender was; and so was the delivery of the Copy to *JS*, the *Cestuy que use*. But none of these things did imply the Consent or Will of the Lord, that the *Cestuy que use* should be admitted or have the Lands according to the Surrender; and all these things together do not imply any Admittance, for all of them may be done, though no Admittance be in the case.

M. 6 Jac. in
B. R. Wilson
and Wed-
dall's Case,
Yelv. 144.

Note, It was Resolved in the Court of King's Bench, That if a Surrender be of a Copy-hold to *JS*, it is of no effect until he be admitted Tenant: and if before Admittance *JS* doth surrender the Land unto another, a Stranger, who is ad-

admitted, yet nothing passeth to the Stranger by this Admittance of the Stranger.

SECT. V.

Where some things, and what things, may be done by the Copy-holder or his Heir before Admittance.

Proofs.

1. **T**HE Heir of a Copy-holder may enter and have an Action of Trepass before Admittance. 2. A *Posseſſio Fratris* or *Sororis* may be of a Copyhold before Admittance. 3. A Discent shall not bind the Heir of a Copy-holder. 4. He may surrender unto a Stranger before Admittance.

Co. 4. part, Clark and Penysfather's Case.

A Copy-holder in Fee had Issue two Daughters by divers Women, and died seised; the Daughters entred, and took the Profits many years; and before Admittance, the eldest Daughter died without Issue, and afterwards the youngest Daughter was admitted to the whole Land, as sole Heir to the Father. In this Case it was holden, That the possession of the eldest Daughter, though before Ad-

Vid. 12 Eliz. Dyer 291.

Admittance, should make her Sister, though of the half bloud, inheritable to the Land.

24 Eliz. in
Co. B. Coke
4-part, 23.
Brown's
Case acc.

If a Copy-holder in Fee by Licence maketh a Lease for years, and the Lessee entreth, the Copy-holder having a Son and a Daughter by one Woman, and a Son by another; the Land shall descend to the Daughter of the whole bloud, although that the Son died, and was not admitted to the Copy-hold as Heir to his Father. And that that should be *Possessio Fratris* of a Copy-hold before Admittance.

40 Eliz. in
B.R. Arnold
and George's
Case, Tels.
16. acc.

If a Copy-holder doth surrender to a Stranger, and the Steward will not admit him, and the Stranger enters, and holds the Land; if the Lord bring Trespass against him before Admittance, he may plead Not guilty, and his Plea shall be good, and it shall be found against the Lord, because he is *particeps criminis* to the Admittance, because it shall be intended, that the Lord would not suffer the Steward to admit him to the Copy-hold.

Tr. 2 Jac.
B.R. Joyner
and Lamb-
bert's Case,
Cro. 2. part,
36.

A Copy-hold was seized by the Lord of the Manor, and he granted it to another in Fee, who died, and his Heir was admitted; then the first Copy-holder died,

ed, and his Heir entred, and surrendered unto a Stranger in Fee. It was Resolved in that Case, That the Entry of the Heir was lawful, though he was not admitted to the Copy-hold-estate, and the Discent of the Land to the Heir of the Grantee of the Lord should not bind him. And farther it was Resolved in that Case, That the Heir of the Copy-holder being in the Land, his Surrender of the Land unto a Stranger was good before his Admittance.

SECT. VI.

Where the Lord is but an Instrument to convey the Copy-hold by Admittance only, and that the Surrenderer is in by the Copy-holder, and not by the Lord.

Although generally (as before is said) a Copy-holder cannot enter and have Seisin of the Land without the Admittance of the Lord, no more than a Parson or Prebend can have Seisin, or be full Incumbent, till the Arch-deacon hath inducted him, or the Dean and Chapter enstalled him: yet the Lord is but an Instrument used for the settling of the Copy-

Vide Plow. Com. 241. in Hare and Bickley's Case.

py-holder in his Copy-hold, and to transfer the Land *secundum formam & effectum Sursumrestitutionis*, and the Estate, Right and Interest in the Copy-hold doth not pass as from the Lord; but upon the Admittance made by the Lord the Copy-holder is in by him who made the Surrender, and by the Custome, and seised of the Copy-hold *secundum Consuetudinem Manerii*, &c.

Proofs.

*M. 40 Eliz.
B. R. Pay
and Brown's
Case, Cro.
1. part.*

The Lord of a Manor demised Copy-hold of Inheritance to *A*, upon Condition that he should pay to *B* 20 *s.* yearly during his Minority, and 100 *l.* at his full age. *A* paid not the 20 *s.* but surrendered the Land to the Use of *P* and his Heirs. The Lord admits him. *B*. attains his full age, and the 100 *l.* is not paid. The Lord enters for the Condition broken, and grants the Land by Copy to *B*. *P* enters upon him. It was holden in this Case, That his Entry was lawful, for that he to whose Use the Surrender was made comes in by him who surrendered, and not by the Lord.

A Copy-holder in Fee surrendered his

his Lands into the hands of the Lord by the hands of the Tenants, according to the Custome, without expressing to whose Use it should be. At the next Court he was admitted *Habendum* to him and his Wife in tail. It was objected, That no Use being expressed, the Surrender was void, and the Admittance not good, to pass an Estate to the Wife not being named in the Premises; but in the *Habendum* only. It was Resolved, 1. The Surrender was good, for it shall be intended, that the Surrender generally made was to such Use as was specified in the Admittance; and the Lord was only as an Instrument put in trust to convey the Estate, and make such Admittance as he who surrendered would have him to make. 2. That the Wife should take by the Admittance, though she was not named in the Premises, but in the *Habendum* only.

Tr. 15 Jac.
B.R. Brook's
Case, Foph.
125.

If a Copy-holder surrendreth his Lands to the use of *J S*, the Lord hath but a Customary power to make the Admittance *secundum effectum & formam Surreditionis*. And if in such case the Lord grants the Land to *J S* and a Stranger, all shall enure to *J S*, and nothing to the Stranger. And if the Copy-holder doth

33 Eliz. Co.
4. part, West-
wick's Case.

doth surrender his Lands without a Condition, if the Lord doth admit the Tenant upon a Condition, the Condition is void; for that after the Admittance the Surrenderee is in by him who made the Surrender, and not by the Lord.

28 Eliz. Co.
4. part, Bunting's Case.

A Copy-holder surrenders to the Use of another; the Lord admits him to hold to him and his Heirs: yet he shall have but an Estate for Life, for that after the Admittance he is in by him who made the Surrender, and not by the Lord.

Coke 8. part,
in Swayne's Case.

The Custome of the Manor was, That a Copy-holder for life might take Timber to repair: The King made a Lease of the Manor, excepting Woods and Underwoods and Trees: The Lessee for years of the Manor grants a Copy-hold upon which were Timber-trees to another for life, who cuts Timber to repair. It was Resolved, That in this Case, notwithstanding the Severance and Exception, the Grantee should have the Trees, for that the Estate of the Copy-holder who comes in by a voluntary Grant is in by the Custome, and the Lord is but an Instrument to make the Grant.

Co. 4. part,
in Tavernor's Case.

When a Copy-holder surrenders to the Use of another, and the Lord admits him;

now

now he who is admitted is in by him who makes the Surrender. For in a Plaint in the nature of a Writ of Entry in the *Per*, he shall be supposed to be in the *Per* by him who made the Surrender, because the Lord is but an Instrument to make the Admittance; and he who is admitted shall not be subject to any Charges or Incumbrances of the Lord, for the Lord hath but a Customary power to make the Admittance *secundum effectum sursumrestitutionis*, as before is said.

A Copy-holder surrenders to the Use of *J S*; the Lord refuseth to admit him: he cannot enter, unless there be an especial Custome to warrant it; but if there be, then he may enter.

*M. 37 Eliz.
Cro. i. part,
Berry and
Green's Case.*

SECT. VII.

Where the Admittance of the particular Tenant shall be the Admittance of him in the Remainder.

Proofs.

A Copy-holder in Fee by Licence made a Lease for years; the Lessee enters; the Copy-holder, having issue a Son and a Daughter by one Woman, and a Son by another,

*M. 24 Eliz.
Co. 4. part,
Brown's Case.*

another, died; the eldest Son died before Admittance. In this Case it was Resolved, (amongst other things) That the Admittance of Tenant for life is the Admittance of him in the Remainder, but not to bar the Lord of his Fine, which he ought to have by the Custome.

*P. 36 Eliz.
B.R. Coke
4. part,
Fitch and
Huckley's
Case.*

The Father a Copy-holder in Fee made a Surrender to the Use of himself for life, and after to the use of his Son for life, and after to the Use of his last Will. The Father was admitted, and died: The Lord pretending a Forfeiture entred, and granted the Copy-hold to a Stranger. Resolved, That the Admittance of the Tenant for life was the Admittance of him in the Remainder; and then the Land could not vest in the Grantee of the Lord.

*Tr. 36 Eliz.
B.R. Deal
and Hig-
den's Case,
Moore 358.*

It was Resolved by the Justices, That the Admittance of Tenant for life of a Copy-hold is the Admittance of him in the Remainder, because he is to pay his Fine which is intire, and no Fine is due to be paid by him in the Remainder to the Lord: but otherwise it is of him in the Reversion.

*M. 39 Eliz.
B.R. Cro.
2. part, Gip-
pin and Bar-
ny's Case.*

A Copy-holder surrendered to the Use of one for life, the Remainder to another in

in Fee : Tenant for life was admitted : He in the Remainder surrendered to the Use of *J S* ; which Surrender the Lord accepted of, and admitted him, and then the Tenant for life died. It was holden in this Case, That the Heir of *J S* should have the Land, for that the Admittance of the Tenant for life was the Admittance of him in the Remainder ; and also because the Acceptance of the Lord was *quasi* an Admittance to him in the Remainder.

A Copy-holder in Fee surrendered to the Use of his Wife for life, the Remainder to his younger Son in Fee, and died ; The Wife was admitted, but the younger Son refused to be admitted during the life of his Mother, but afterwards, without other Admittance, he surrendered to the Use of *J S*. It was Resolved, That the Admittance of the Mother Tenant for life was the Admittance of the younger Son in the Remainder, because they made but one Estate.

*Tr. 2 Jac.
B. R. Auncelme and
Auncelme's
Case, Cro.
2. part.*

A Copy-holder had Issue 3 Sons, *B, C,* and *D,* and surrendered to the Use of his last will, and thereby devised the same to his Wife for life, the Remainder to *C* and the Heirs of his body : The Wife di-

*Hil. 31 Eliz.
B. R. Bullein
and Graunt's
Case, Leon.
1 part, 1746*

ed after Admittance, and the Lord granted the Copy-hold to *D* in Fee, who surrendered to the Use of *J S* for life, and after died without Issue : *B* the eldest Son entered. It was adjudged, That his Entry was lawfull, and that Admittance of him was not necessary ; for that if a Copy-holder surrendreth to the Use of one for life, he in the Reversion or Remainder may enter without any new Admittance.

SECT. VIII.

By what and whose Act, either of the Law of the Copy-holder himself, or of the Lord, severally or all together, the Copy-hold-land or Estate shall be gone, determined, or extinguished ; and where suspended only.

HAVING in the Sections before declared where a Surrender and Admittance thereupon, either by the Lord or his Steward in Court, or to them, or into the hands of Tenants out of Court, shall be good, and where not : Let us now look upon this Division, and see in what case the Copy-hold or Copy-holder's Estate

state or Interest shall be said to be gone, determined, or extinguished; and by what and whose Act it was or may be determined. First, It may be determined by the Act of the Lord himself. 2. By the Act of the Copy-holder. 3. By Acts of them both joyned together. And lastly, by the Act of the Law. All which will evidently appear by the Judgments, Resolutions and Precedents after ensuing.

Proofs.

The Lord by his Act cannot, without the concurrent Act of the Copy-holder himself, determine the Estate and Interest which the Copy-holder hath in his Copy-hold. And therefore the Severance of the Free-hold and Inheritance of the Land holden by Copy of Court-Roll (being done by the Act of the Lord) doth not determine the Copy-holder's Estate, or extinguish the Copy-hold. For although that the Estate of the Copy-holder be but an Estate at will, viz. *ad voluntatem Domini secundum Consuetudinem Manerii*; yet Custome hath so established the Estate of the Copy-holder, that he is not removeable at the

Co. 2. part, 17. in Lane's Case.

Co. 4. part, 21. in Brown's Case.

will of the Lord, so long as he performs the Customes and Services.

If a Copy-holder will joyn with the Lord in a Deed of Feoffment of the Manor, there, by that Act of them both, the Copy-hold is extinct; as it was said by the Lord *Anderson* Chief Justice, *P. 24 Eliz. in Co. B.*

Vid. Cro. 1. part, 5. acc.

A Feme-sole was Lady of a Manor, to which were divers Copy-holders: One of the Copy-holders did intermarry with the Seignioress of the Manor. It was the opinion of the Justices, That the Inter-marriage was onely a Suspension of the Copy-hold, and not an Extinguishment of it. But afterwards they joyned in suffering a common Recovery of the Land; and upon that their Act it was Resolved, that the Copy-hold was extinguished.

H. 26 Eliz. in Co. B. Cro. 1. part, Stockbridg's Case.

Husband and Wife Copy-holders in Fee to them and their Heirs: The Husband for Money obtained an Estate of Free-hold to him and his Wife, and the Heirs of their bodies. It was Resolved in that Case, That by the Acceptance of the new Estate the Copy-hold was determined.

M. 29 Eliz. in C. B.

Godb. 101.

If a Copy-holder doth surrender to him who hath a Lease for years of the Ma-

Manor to the Use of the same Lessee, by that Act of his the Copy-hold-estate is extinct.

The Lord of a Manor sold the Freehold of a Copy-hold unto another, and so it was divided from the Manor: and afterwards the Copy-holder did release to the Purchaser. It was the opinion of the Justices, That by this Release the Copy-hold was gone and extinct. But in that Case it was said, That if a Copy-holder be ousted, so as the Lord of the Manor is disseised, and the Copy-holder releaseth to the Disseisor, *Nil operatur* by such Release.

P. 30 Eliz.
B. R. Leon.
1. part, 102
Wakefield's
Case.

A Copy-holder had common by Usage in the Wastes of the Lord as to his Messuage and Lands belonging: The Copy-hold comes to the Lord, who after grants the same to the Copy-holder *cum pertinentiis*. In this Case it was holden, That these words, *viz. (cum pertinentiis)* could not create a new Common, and the Common first holden was by Custome annexed to the Customary Estate, and was absolutely extinguished.

If there be Lessee for life, the Remainder for life of a Copy-hold, and the first Tenant for life purchaseth the Free-hold

M. 9 Jac. in
C. B. ad-
judge. acc.

of the Copy-hold, and afterwards levieth a Fine thereof, and five years pass : It was adjudged, That in that Case by the Fine levied the Copy-hold was not gone nor destroyed, and that this Fine was not a Bar to him who was in Remainder in life of the Copy-hold.

*P. 8 fac. in
Co. B. Moore
and Ride-
val's Case.*

There was Tenant for life of a Copy-hold: The Lord granted the Reversion of the Copy-hold after the determination of the particular Estate to another for 20 years: Afterwards the Copy-holder, who was Tenant for life, by Deed made a Lease for life of his Copy-hold, and made Livery, which was a Forfeiture of his Copy-hold-estate. It was the opinion of the Justices in that Case, That this Act of the Tenant for life was not a Determination or an Extinguishment of the Copy-hold: For although it was a Determination of the particular Estate of the Copy-holder, and that he in the Remainder might enter; yet the Land remained Copy-hold as it was before.

*3 fac. in B.
R. Lashmor
and Averie's
Case, Cro. 2.
part.*

The Custome of a Manor is, That if a Copy-holder in Fee dieth seised, his Wife shall hold the Land during her life as Free-Bench: the Lord enfeofeth the Copy-holder of the Land. It was ad-
judg-

judged, That she should not hold the Land for her life as Free-Bench, but it was gone by the Purchase. Contrary, if the Lord had infeoffed a Stranger of the Land.

C purchased a Copy-hold from A Lord of the Manor, to him and his Wife and their Child for their lives: Afterwards A by Indenture granted the Freehold to B for life, rendring Rent, and made Livery: and afterwards A levied a Fine *sur Conusans de droit*, &c. to C of the same Lands, who afterwards accepted of the Rent from B. It was holden in that Case, That by the Acceptance of the Rent from B the Copy-hold of C was destroyed and determined,

Vid. 30 H. 8. Dyer, acc.

Note, If a Copy-holder takes a Lease for years of his Copy-hold-lands, the Copy-hold is determined: and so it is, if the Lord leaseth a Copy-hold for years which is escheated, the Copy-hold is determined. But if a Copy-holder purchaseth the Manor, the Copy-hold is not determined, but suspended, because there is no Interruption, but it is able to be granted again, because by the Custome it sufficeth that it hath been demised and demisable.

M. 15 & 16 Eliz. in Co. B.

SEC T. IX.

Of Forfeitures of Copy-hold, and Copy-hold-estate; and what Acts or things done by the Copy-holder shall amount unto or be adjudged a Forfeiture of the Copy-holder's Estate, what not.

THE general Grounds of Forfeitures of Copy-holds, or of their Estates, are declared in the former part of this Treatise, unto which I shall refer you. That which I shall now say is but by way of Amplification of those Grounds, with some Judgments and Authorities in several Cases upon sundry differences. All Forfeitures may be reduced unto these Heads: Either voluntary Acts done to the prejudice of the Lord, or negligent or wilfull refusal to doe and pay his Duties and Services to the Lord, which by the Laws and Customes of the Manor he ought to doe and perform.

Proofs.

*Coke 4. part,
Murre's
Case.*

A Copy-holder makes a Lease either for life or years of his Copy-hold-lands, which

which is not warranted by the Custome of the Manor : now although such Lease shall be a good Lease as betwixt the Copy-holder and his Lessee, and he shall not avoid his own Lease ; yet as unto the Lord it is a Forfeiture of the Copy-hold and of his estate, and the Lord shall take advantage of such Forfeiture, and may enter upon the Lands leased.

So if a Copy-holder makes a Lease of his Copy-hold for 3 years by word, to begin at *Michaelmas* or at a day to come ; although it is a good Lease as betwixt the parties to it, yet it is a Forfeiture of the Copy-hold to the Lord ; and so it was holden *Hil. 37 Eliz.* in *East and Harding's Case*.

*H 37 Eliz.
East and
Harding's
Case.*

A Copy-holder of a Manor made a Lease of his Free-hold-lands for 10 years, and, to avoid a Forfeiture, made a Lease of his Copy-hold-lands for one year ; but covenanted with his Lessee, that he should enjoy the Copy-hold-lands *de anno in annum*, during the 10 years. It was the opinion of the Justices in this Case, That because this demise of the Copy-holder was but for one year, and so warranted both by Law and Custome, and it was but onely a Covenant on the part of the Lessee, that he

*P. 10 Jac. in
Co. B. the
Lady Moun-
tagne's Case,
Cro. 2. part,
acc.*

he should hold it for a longer time, that this was no Forfeiture, although the Lord pretended the same to be a Forfeiture.

*M. 27 Eliz.
in Co. B. by
Anderson.
Moore 184.*

The Lord licensed his Copy-holder to make a Lease of his Copy-hold-lands for 21 years, to begin at *Michaelmas* following: The Copy-holder by Indenture made a Lease accordingly; but afterwards, before *Michaelmas*, he made another Lease by Indenture to another person, to begin at *Michaelmas* following. It was the opinion of the Lord *Anderson* Chief Justice, *Mich. 27 Eliz. in Co. B.* That the making of this second Lease, being without the Licence of the Lord, was a Forfeiture of his Copy-hold.

*M. 15 Jac. in
B. R. Wor-
ledge and
Barbary's
Case, Cro. 2.
part.*

A Copy-holder for life hath Licence of the Lord to make a Lease for 3 years, if he so long live, and he makes a Lease for 3 years without such Limitation. It was holden to be no Forfeiture of his Estate in the Copy-hold, because the Law makes such a Limitation to the Estate which he makes, that it shall continue but during his life. But if he had been a Copy-holder in Fee, it had been a Forfeiture of his Estate to have made such an absolute Lease, because he had done more

then

then he was licensed to do by the Law. And so it was adjudged in *Hall and Arrowsmith's Case*, which see in *Popham's Reports*, 185.

If a Copy-holder without Licence of the Lord doth erect a new House upon his Copy-hold-lands, some opinion hath been, That the same is a Forfeiture of his Estate. But I doubt much of that Case, because the Act done is for the benefit and advantage of the Lord, and not to his Prejudice. *Quære* of it.

*M. 3 Jac. in
B R. Warr's
Case.*

S E C T. X.

Where denial or refusall to pay his Rent, Fine, or to doe his other Customes and Services, shall be a Forfeiture of his Copy-hold and Copy-hold-estate, and where not.

Proofs.

A Copy-holder in Fee was seised of Land rendring Rent at *Michaelmas* and our *Lady-day*. The Lord at the last instant of the day of payment demanded the Rent upon the Land, and the Copy-holder was not there, nor any for him, to pay it. It was a Question, if his Non-payment of the Rent was a Forfeiture of his

*H. 33 Eliz.
Crispe and
Fryer's Case
in Moore.*

his Copy-hold or not. And the better opinion of the Court seemed to be, That it was a Forfeiture, because the Copy-holder was to take peremptory notice of the day of payment of his Rent, and his not being there seemed to imply that it was a voluntary Denial, or Refusal at the least, of doing the same. But *Quære* of it; for it was resolved in another Case, *Tr. 21 Jac. in C. B.* That not payment of Rent, or of the Fine upon admittance to his Copy-hold, was no Forfeiture of his Copy-hold-estate, without there was some express verbal Denial of it, which there was not in this Case.

*Tr. 21 Jac.
in Co. B.*

*M. 37 Eliz.
B. R. Taver-
nor and
Lord Crom-
wel's Case,
Cro. I. part.*

A Copy-holder seized by force of several Copies of *Black-acre* by the Rent of 4 *d*, *White-acre* by the Rent of 4 *d*, and *Green-acre* by the Rent of 6 *d*, denied the Rent of *Black-acre*. In that Case it was holden to be a Forfeiture of that Acre, but no Forfeiture of the other two Acres, because although they were all in one hand, yet because they were holden by several Rents, the Forfeiture of the one Acre cannot be the Forfeiture of the other two Acres.

No Fine is either due or payable to the

the Lord, but either upon a Discent, or upon an Admittance. But if such a Copy-holder upon his Admittance shall make an absolute Refusal to pay the Fine to the Lord, the same is a Forfeiture of his Copy-hold and of his Estate. But there such a Fine must be reasonable. For if the Fine assessed by the Lord be an unreasonable Fine, (of which the Judges shall determine) a Refusal or Denial of the Copy-holder to pay the same shall be no Forfeiture of his Estate or Copy-hold.

Vid. Coke 4. part, 28. in Sands Case.

Note, It was Resolved by the Justices, That if the Lord demandeth an unreasonable Fine of his Copy-holder, and he refuseth to pay it, it is no Forfeiture; otherwise where it is a reasonable Fine. If a Fine be certain, the Tenant is to bring it with him to the Court, and to pay it before Admittance; and if he be not ready to pay it, it is a Forfeiture, and so it was adjudged. But what shall be a reasonable Fine or an unreasonable Fine, ought to be determined *per arbitrium boni viri*; and the Court and Justices of it shall be Judges of the Reasonableness of the same: if it be pleaded that the Fine demanded by the Lord, or the Dis-

M. 43 Eliz. Dalton and Hamona's Case, Moore 622.

Distress for it, be unreasonable or excessive.

M. 6 Jac. in
C. B. Wil-
lowes and
Willowes
Case. Coke
Select Cases.

A Copy-holder seized of Copy-hold-lands of the yearly value of 53 s. 4 d. per annum; and no more, surrendered them into the hands of the Lord of the Manor to the Use of J S and his Heirs: The Custome of the Manor was, That upon the Admission of any person a reasonable Fine shall be assessed by the Lord or his Steward to be paid. The Steward at the Court holden for the said Manor assessed a Fine of 5 l. 6 s. 8 d. (the value of the Lands for 2 years) to be paid by J S for a Fine; which Fine being requested of him by the Lord to pay, he refused to pay the same; whereupon the Lord entered upon the Lands for a Forfeiture. In which Case these Points were Resolved. 1. That if the Fine assessed had been reasonable, yet a certain time was to be set, and a certain place where it should be paid: for it shall not be intended that the Tenant hath sufficient Money about him to pay a Fine which is uncertain to be assessed. 2. That the Fine assessed by the Steward was an unreasonable Fine: and 3. That the Refusal was no Forfeiture.

If

If the Fine of a Copy-holder be assessed by the Lord or his Steward, be the Fine reasonable or unreasonable, the Lord must demand the Fine of the Copy-holder before he can enter upon the Copyhold for not payment thereof, and the Reasonableness or Unreasonableness thereof shall be adjudged by the Court.

H. 13 Jac.
C. B. Denny
and Lemon's
Case, Hob.
135. C. 11.
part, God-
fric's Case
acc.

Lands being Customary Lands, and by the Custome discendable to the younger Son, the Father died, the younger Son being of the age of 2 years: Thirty years incurred after the death of the Father, and no Court had been holden for the Lord of the Manor: But in the interim the younger Son had made a Lease of the Lands to a Stranger; and after, at the next Court holden for the Manor, he came into Court and prayed to be admitted, but the Steward refused to admit him. It was holden in this Case, That the Lease made by him was good, and that there was no negligence in him to be admitted to the Copyhold-estate; for that it was holden in this Case, That if a Copy-holder dieth, his Heir within age, he is not bound to come at any Court during his Nonage to pray Admittance, or to tender his Fine for the same; and

P. 30 Eliz.
B. R. Anthon-
ry and Eves
Case, Leon.
1 part, 100.

if

if the death of the Ancestor be not presented, nor Proclamations made that the Heir come in to take up the Land and pay his Fine, the Heir shall not forfeit his Land for such neglect, although he be of full age.

4 Eliz. Dyer
211.

If the Homagers in a Court-Baron being Copy-holders do refuse to make their Presentments, it is a Forfeiture of their Copy-holds: and so it was Resolved to be by both the Chief Justices in the *Star-Chamber* in the Earl of *Arundel's* Case.

H. 13 Jac.
B. R. Bel-
field and A-
dams Case,
Bulstr. 3.
part, 81.

A Copy-holder came not to the Lord's Court of the Manor to doe his Suit and Service by the space of 3 years together. The Question was, if it was a sufficient cause of Forfeiture of his Copyhold. It was said by the Court, That it was no cause of Forfeiture, if a Warning be not given by the Lord of the time of his Court to be holden, and notice thereof given to the Copy-holder himself; and the withdrawing of his Suit by a Copy-holder is onely fineable: but if he doth deny to doe his Suit and Service, then it is a Forfeiture of his Copyhold: and so was it adjudged *M. 14 Jac.* in *B. R.* in *Hammond* and *Winibank's* Case.

Sum-

Summons was given at the Church-door for a Copy-holder to appear at the Lord's Court, and do his Suit and Service; upon which Summons he did not appear. The Doubt was, if it was a cause of Forfeiture of his Copy-hold. It was the opinion of the whole Court, That it was no cause of Forfeiture of his Copy-hold, because that it was not shewed that it was the Custome to make such Summons: and the Court said, That it were hard to make it a Forfeiture, because perhaps the Copy-holder had not Notice of it: and they held that in such case Notice must be given to the person, and his Refusal must be a wilful Refusal.

The Custome of a Manor was, That if a Copy-holder died seized, his Wife should hold his Lands as her Free-Bench, and be admitted Tenant, and that the Son should not be admitted Tenant during the life of his Mother: and farther the Custome was, That if any Copy-holder committed Felony, and it were presented by the Homage, that the Lord might seize the Copy-hold as forfeit: The Copy-holder died; his Wife was admitted to her Free-Bench: The Son committed Felony; the Wife died. The Question

D

was,

H. 36 Eliz.
in C. B.
Godb. 142.

Vid. M. 30
Eliz. C. B.
Sir John
Bruanche's
Case, Leon.
1 part, 104.
Where general
Warning
of a Copy-
holder to
appear at the
Lord's Court
given within
the Parish
shall be
sufficient,
where not.

H. 25 Eliz.
in B. R.
Borneford
and Sir John
Packington's
Case, Leon.
1. part, 1.

was, if the Lord might seize the Copyhold as forfeit. It was objected, He could not, for that the Son was not Tenant at the time of the Forfeiture committed, and so the Lord could not then seize, and the Custome should be taken strictly. But notwithstanding it was Resolved, That the Lord should have the Land as forfeit, and that the Son was a Copy-holder within the Intent of the Custome.

If Husband and Wife be Joynt-Copyholders of the purchase of the Husband; during the Coverture the Husband is attainted of Felony, and dieth. It is no Forfeiture of any part of the Copyhold. But if the Purchase be made before the Coverture, then it is a Forfeiture of the moyety.

*M. 3 Jac. in
Scaccario
Godb. 269.*

The King being Lord of a Manor, a Copyholder within the Manor made a Lease of his Copyhold for 3 Lives; and the surviving Tenant for life continued the possession of the Lands for 40 years. Though the making of such a Lease for 3 Lives was in Law a Forfeiture of the Copyhold; yet because it did not appear upon the Endorsement of the Deed that Livery was made, it was holden, That the

the King could not take advantage of the Forfeiture.

If a Copy-holder doth bargain and sell his Copy-hold-lands by Deed indented and enrolled, it was Resolved, The same was no cause of Forfeiture of the Copy-hold of which the Lord can take advantage, because the Copy-hold did not pass by the Deed: and so it was said it was adjudged in *London's Case*.

So, if a Copy-holder for life surrendreth to the Uſe of another in Fee, and besides that makes Livery of the Land; this is no Forfeiture of his Copy-hold, because the Estate passeth by the Surrender, and not by the Livery.

35 *Eliz. Bullock's Case.*

If a Copy-holder for life cuts down Timber-trees, it is a Forfeiture of his Copy-hold: and so it was adjudged in *Belfield* and *Adams Case*. But if a Copy-holder makes a Lease for years, and the Lessee cuts down Timber-trees, or commits other Waste upon the Copy-hold-lands, the Lord cannot enter upon the Land for a Forfeiture; but in such case the Lord is put to his Action upon the Case against the Wrong-doer.

SECT. XI.

Where the Act of the Lord, and what Act of his, shall dispense with a Forfeiture made by his Copy-holder; where and what not.

Proofs.

*Pasc. 3 Jac.
Cro. 1. part,
Manlie and
Willington's
Case.*

A Copy holder commits Waste, and after the Waste done, the Lord accepts of the Rent from the hands of the Copy-holder. *Quare* if it shall bar him to enter for the Forfeiture. It is a *Quare* not Resolved.

*P. 5 Eliz.
Moore 49.*

If Lands be demisable to two by Copy for life *successivè*, and the Custome of the Manor is, that they may not cut Trees: if the first of them cutteth down Trees, it is a Forfeiture both of the Estate of the present Tenant for life, and of the Estate of the other in Remainder over.

If a Copy-holder levies a Fine, makes a Feoffment, or suffers a common Recovery which destroys the Estate: in such case no Acceptance of the Rent, or Act done by the Lord, shall be available to make the Estate again good. But where the Custome of the Manor onely is broken;

ken; as if the Copy-holder makes a Lease of his Copy-hold-lands for more years than one year, or denies to pay his Rent, or denies to be sworn of the Homage, or commits Waste: there his Estate may be afterwards confirmed, and there and in such case the Acceptance of the Rent by the Lord will amount to a Confirmation of the first Estate.

In some cases, where an Estate of a Copy-holder is forfeited by Law, yet by Custome, and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land shall not be utterly forfeited or destroyed. As where the Custome is, That for Waste Copy-hold shall be forfeited, a Custome for to amerce the Tenant for the Waste done, and to distrain for the Amercement, will be a good Custome to mitigate the Forfeiture of the Copy-hold.

The Custome of the Manor where Copy-hold-tenements were demisable for lives was, That if any such Copy-holder suffered his Messuage to be ruined for want of Repairing, or by committing of Waste, if the same was presented by the Homage, the Lord used to distrain the Cattel as well of the Copyholder

17 Car. in
B.R. Thornt.
and Tyler's
Case.

holder himself as of his Under-tenant levant and couchant upon the Lands for the said Amercement. It was objected, That the Custome was not good, for that it was an unreasonable Custome, that the Under-tenant should be punished for the offence of the Copy-holder, for the Under-tenant is a Stranger to the Custome, and Customes should be taken strictly. But it was Resolved that the Custome was good: For by the Law, the suffering of the Copy-hold Mesuage to fall to ruine, or to be wasted, was a Forfeiture of the Copy-hold, and the Custome did abridge and mitigate the Forfeiture, and the Under-tenant for a year was a Tenant to the Lord, and distrainable for the Rents and Services, and the Charge lies upon the Land, and not upon the person; and therefore it was Adjudged, That the Custome was good, and the Amercement lawful, and the Distress of the Cattel of the Under-tenant levant upon the Land was lawful, all of them being by the Act of the Lord in his Court, and by the Custome of the Manor, in mitigation of the Forfeiture of the Land, and so for the good of the Copy-holder.

SECT. XII.

Whether Copy-hold-lands be within the Statute of Westm. 2. and may be entailed, or not; and where and by what Acts the Issues in tail may be barred; and shall be a Discontinuance of the Estate, what not.

WHether Copy - hold - lands are
within the Statute of *West. 2. ca. I.*
de Donis, &c. or may be entailed, hath
been much controverted, and many Judg-
ments and Resolutions have been on both
sides; and it seemeth to be a point not
fully agreed upon at this day. I shall
therefore make some little mention what
hath been said on either side, and leave it
to the judgment of others. And first
for the Affirmative part, That Copy-
holds are within the said Statute, and may
be entailed, I shall begin with Mr. *Lit-*
tleton himself. Tenant by Copy of Court-
Roll is, saith he, where there is a Cu-
stome in a Manor time out of mind used,
that certain Tenants within the said Ma-
nor have used to have Lands and Tene-
ments

ments to them and their Heirs in Fee-simple or in Fee-tail : and in that Chapter he particularly sets forth the manner of Grants of such Estates, viz. *Ad hanc Curiam venit A de B, & sursumreddidit in manus Domini, &c. unum Messuagium, &c. ad usum C de D, & Hæredum suorum, vel Hæredum de corpore suo exeunt. Habendum sibi & Hæredibus de corpore suo exeunt. &c.* By which it appeareth to be the opinion of Mr. *Littleton*, that an Estate may and might be of Copy-hold-lands. And herewith agreeth the opinion of Mr. *Plowden* in his Commentaries in *Morgan and Manxell's Case*. But note, that the opinion of Mr. *Littleton* is, That there must be a Custome of the Manor to enable such Estates of Copyhold-lands.

It is said in *Coke* 3. part, in *Heydon's Case*, That where an Act of Parliament doth alter the Service, Tenure or Interest of the Estate, either in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenants, there such an Act of Parliament doth not extend to Copy-holds. And therefore the Statute of *Westm. 2. de Donis*, because it extendeth to the Alteration of the Service

vice and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copy-holds. But in that Case it is agreed, That by a special Custome Lands might be entailed; for that it might be, that upon the creation of the Manors Lands were given by Lords of Manors to hold by their Tenants by particular Services and for particular Uses; viz. to some to them and their Heirs in Fee-simple, to some others to hold to them and the Heirs of their bodies begotten, and to some others for particular Estates, as for life, &c. and such Estates having continued in their Issues time out of mind, Custome hath now enabled such Estates to be of Copy-holds in tail: and although they have and enjoy such their Estates, be it either Fee-simple or Fee-tail, yet it is but *secundùm Consuetudinem Manerii*: and therefore and for these Reasons and causes, although that Copy-hold be not or could not be entailed within the general words of the Statute *de Donis, &c.* yet by Custome time out of mind used, they say that Copy-holds may be entailed.

36 Eliz. in the *King's Bench* it was Adjudged, That where the Custome of the

the Manor was, that Lands might be granted unto any in Fee-simple, in such case a Grant of Lands unto a man and the Heirs of his body was within the Custome: For a Custome which extendeth to the greater will extend to the lesser Estate.

*M. 15 Jac.
Lee and
Brown's
Case, Popb.
128.*

Tenant in tail of a Copy-hold surrendered the same into the hands of the Lord, to the Use of *J S, &c.* In that Case 2 Questions did arise. 1. If Copy-holds were within the Statute *de Donis, &c.* 2. Whether the Tail might be cut off by a Surrender. The Court doubted of the first Point; but the better opinion seemed to be, That the Statute co-operating with the Custome, they might be entailed.

*H. 31 Eliz:
B.R. Bullen
and Grauni's
Case, Leon.
1 part, 174.*

A Copy-holder had Issue 3 Sons, *A*, *B*, and *C*, and surrendered his Copy-hold-lands to the Use of his last Will, and thereby declared the same to be to the Use of his Wife for life, the Remainder to *B* his second Son in tail, and afterwards to *A* in Fee. It was a Question in this Case, if *B* had a Fee-simple conditional in the Lands, or an Estate-tail. For if a conditional Fee, then a Remainder over of it could not be limited. It was the opinion of *Wray* Chief Justice, That it was an Estate-tail in *B*, and not a Fee

con-

conditional, and that Customary Lands might be granted in tail.

A Surrender of Copy-hold-lands was made within the Manor of *Stevenson*, to the Use of *J S* and the Heirs of his body; and after Issue, he surrendered the Lands unto another. It was agreed by all the Justices, That it was a Fee-simple conditional at the Common Law, and after Issue, that he might alien the Lands.

H. 34 Eliz.
B.R. rot-292.
Stanton and
Barney's
Case.

A Copy-holder in Fee of the Manor of *Fairchilds* and *Preachers*, 3 H. 8. surrendered his Copy-hold-lands to the Use of his eldest Daughter for life, the Remainder to the eldest Son of the said Daughter and the Heirs-males of his body, the Remainder to the right Heirs of *A* the Copy-holder in Fee. In this Case it was said, That an Estate in Tail could not be of Copy-hold-lands. It was the opinion of *Fenner* and *Popham*, That by Equity of the Statute *de Donis* an Estate-tail might be of Copy-hold-lands, though not otherwise.

M. 36 Eliz.
B.R. Grave-
nor and
Brook's Case,
Feph. 34.

Now on the other side, That Copy-hold-lands cannot be entailed, nor are within the Statute *de Donis, &c.* see these Cases and Resolutions following.

H 35 Eliz. in Co. B. it was Resolved
by

H. 35 Eliz.
in Co. B.
Pitts and
Huckley's
Case.

by all the Justices, that Copy-holds were not within the Statute of *Westm. 2. de Donis* : For if they were within that Statute, then the Lord should not enter nor take advantage of the Forfeiture of the Copyhold for Felony, (the contrary of which was Resolved in *Borneford*, and Sir *John Packington's Case*) but the Donor, and the Services should be done to the Donor, and not to the Lord of the Manor ; which is against the nature of a Copyhold-Tenure.

Tr. 18 Jac.
in Co. B.
Royden and
Moulster's
Case, Cro. 3.
part, 32, 33.
Godb. 367.
acc.

The Case was, That a Copy-holder surrendered to the Use of one in Tail, there being no Custome to warrant such Surrender. In this Case the Question was, whether a Copyhold might be entailed within the Statute *de Donis*. It was holden by all the Justices, That it could not be entailed within the Statute, and that for divers causes. 1. Because it is not within the Letter of the Statute, which speaks only *de Tenementis per Chartam datis*: and Copy-holds cannot pass by Deed, but by Surrender onely, as is agreed on all sides. 2. Because they are not within the meaning of the Statute, because that before 7 E. 4. 19. they were not of any account in Law, being onely Estates at will of the Lord

Lord *secundum Consuetudinem Manerii.*

3. Because the said Statute *de Donis* provides onely against those who might make Disinherison by Fine or Recovery, which a Copy-holder there could not do or make, because that then upon such Grants in Tail the Reversion should be left in themselves, which could not be, being to the prejudice of the Lord of the Manor. And also 4. because it would be very mischievous, because then there should be no means to dock or cut off such entails, (common Recoveries and Fines not being then in use) unless there were a special Custome to that purpose.

Having thus declared and made mention of the several Cases and Resolutions in this much-controverted Point, Whether Copy-hold may be entailed within the said Statute *de Donis, &c.* I shall not deliver any absolute opinion upon the same, although I do much incline to the Affirmative part, being chiefly led thereunto by the opinion of Mr. *Littleton*, and by the Resolution in *Manxell's Case*, and of my Lord *Coke* in *Heydon's Case*, and a late Resolution in the said Point, 42 *Eliz.* in *Eriſh* and *Rives Case*, where it was adjudged in the Court of *Common Pleas*,
upon

upon an Evidence given in a Case of Copy-hold-lands within the Manor of *Istleworth-Sion* in the County of *Middlesex*; where it was Resolved, That no Estate-tail could be of a Copy-hold without a particular Custome to warrant the same: but if there was such a particular Custome within the Manor to warrant such Estates, then by the Custome co-operating with the Statute (as before is expressed) Copy-hold-lands might be well entailed within the said Statute.

Admitting then that by an especial Custome of the Manor Lands may be entailed; the next matter to be considered of is, By what and whose Acts the said Estate shall be either discontinued or barred, and what shall amount to a Discontinuance or a Bar to the Issue in Tail of such Estate.

13 R. 2. fits.
Judgment 7.

In 13 R. 2. fits. Judgment 7. it is said, That the Heir who is inheritable to the Copy-lands by Custome may recover the same by Plaint in the Court of the Lord in the nature of an Assize of *Mort-dauncestor*, but he shall not have an Assize of *Novel Disseisin*: And 15 H. 8. Tenant by Copy 24. The Heir of a Copy-holder Tenant in Tail shall recover

15 H 8. Tenant by Copy 24.

cover the Lands in a Formedon in the Discender.

The Custome of a Manor was, That Plaints in the Court of the Lord of the Manor have used to be in real Actions. A Recovery was by Plaint in the nature of a real Action against a Copy-holder being Tenant in Tail, and a Recovery thereupon had. It was holden in that Case, That the said Recovery shall be a Discontinuance to take away the Entry of the Heir in Tail, because such Plaints are warranted by the Custome, and it is an Incident which the Law annexeth to the Custome, That a Recovery shall be a Discontinuance. But

Vide Tr. 36 Eliz. in B. R. in Dean and Rigden's Case. If it had been a Surrender in Court, it had been no Discontinuance. *26 Eliz. B.R. Deql and Rigden's Case, Moore 358.*

In 27 *Eliz.* in a Case concerning the Manor of *Northhall* in the County of *Essex*, That if Copy-hold-lands might be entailed within the Statute of *Westm. 2.* then a Custome of a Surrender of it should be a Bar or a Discontinuance of such Estate; for as the Estate might be created by Custome, so it might be discontinued by a Surrender by Custome. And *Tr.*

M. 9 Car. in Co. B. Hill and Upchurch's Case, Brownloe 121.

38 *Eliz.* *Field* and *Eliot's* Case, A Surrender by Tenant in Tail of a Copy-holder in Fee makes a Discontinuance of it. But yet notwithstanding those Authorities and Cases, I do conceive that a Surrender is no Discontinuance of a Copyhold-estate in Tail.

H. 30 *Eliz.*
B.R. *Right*
and *Foot-*
man's Case,
Leon. 1.
part, 95.

If a man be seised of a Copyhold in the right of his Wife, or be Tenant in Tail of a Copyhold, and he doth surrender to the use of another in Fee: It was holden in that Case, That the same doth not make any Discontinuance of the Estate of the Wife or of the Estate-tail, but that the Wife or the Issue in Tail may respectively enter into and upon the Land. And according to this it was adjudged in *Gravenor* and *Brook's* Case before-mentioned in 36 *Eliz.*

35 *Eliz.* in
C. B. *Lane*
and *Hill's*
Case.

Copyhold-lands were entailed, and the Copy-holder surrendered the said Lands to the Use of another man in Tail with divers Remainders over, and then he died. It was said in this Case, That it was no Discontinuance of the Tail; but the issue in Tail, notwithstanding the Surrender, might enter. But it was said in that Case, That if it were a Discontinuance, that in such case a *Formedon* in the

the *Reverter* did not lie by the Tenant in Tail, because when a Copy-holder makes a Gift in Tail, he hath no Reversion, but a Possibility ; and the Lord shall avow upon the Donee for the Rents and Services, and not upon the Donor.

In Trespass it was adjudged , That a Surrender by Tenant in Tail of a Copyhold was not any Discontinuance of it, no more than a Surrender by Tenant for life to another in Fee was a Forfeiture.

H. 1 Jac. Oldcatt's Case, Moore 753.

If an Infant Tenant in Tail surrendreth his Copy-hold-lands to the Use of a Stranger, who is admitted, the Infant may enter at his full age, because it was not a Bar nor a Discontinuance.

H. 35 Eliz. Goales and Gran's Case adjudged, acc.

It is not to be disputed or questioned whether a Common Recovery of Lands at the Common Law with Voucher over and Warranty be a Bar of Lands entailed : It is universally received by all Learned in the Laws of the Realm to be a Bar of such an Estate, and the Inheritances of a great many persons of Quality and others do depend upon such Common Recoveries had and suffered. But then the Question hath been, whether a Common Recovery had and suffered in the Court

E

of

of the Lord of the Manor shall be a Bar of an Estate of Copy-hold-lands entailed : and for that , it will stand upon this difference, Where the Custome of the Manor hath always been , that such a Recovery there had shall be a Bar, where not. For without a special Custome, I do conceive that by a Recovery had and suffered in the Court of the Lord of the Manor, an Estate-tail of Copy-hold-lands cannot be barred : But where such a Custome is or hath been out of mind used, there I conceive that a common Recovery had and suffered in the Court of the Manor will bar an Estate in Tail of Copy-hold-lands. I shall onely put you two Judgments and Resolutions to make good this difference, although many others may be alledged.

*P. 37 Eliz.
in B.R. Clum
and Pease's
Case, Cro. I.
part.*

Upon a special Verdict in an Action of Trespass it was found, That the Lands were Copy-hold demisable in Tail, with the Remainder over in Tail : That Tenant in Tail in possession suffered a Common Recovery with Voucher in the Court of the Manor of these Lands, and afterwards died : But there was not any Custome found for suffering Recovery of such Lands in the Court of the said Manor.

nor. It was holden by the whole Court in that Case, That the Recovery should not bind the tail but upon a Recompence in value, and in that Case the Issue could not have Land in value: Also the Lord should lose his Fine, and the party to whose Use the Recovery was had should hold the Lands without Admittance or Grant from the Lord, which is contrary to the nature of a Copy-hold.

The other Case was this. Land was demisable in Tail by Custome: A Copyholder demised the Land in Tail by Copy: The Copy-holder suffered a Common Recovery in the Court of the Manor with Voucher and Warranty. The Court at the first doubted of it, because a Warranty could not be annexed to such an Estate in Tail. But yet afterwards it was Resolved, That the Recovery there was a Bar of the Tail. And Note, for a Conclusion of this point, That at this day, by the Customes of several Manors, Common Recoveries are had and suffered in the Courts of Lords of Manors for the docking and barring of Estate-tails of Copy-holds. And much inconvenience would ensue, both if Copy-holds at this day might not by Cu-

*M. 37 Eliz.
in B. R.
Eylett and
Lane's Case,
Cro. 1.
Part.*

some be entailed, and likewise if by Custom Common Recoveries had of Estate-tails with Voucher over in the Courts of Lords of Manors should not thereby be docked and barred.

SECT. XIII.

What things are incident to a Copy-holder, and what he may take of common right without the Grant or Licence of the Lord : And what Acts upon the Land shall bind the Copy-holder, what not.

IF a Copy-holder according to the Custom doth surrender into the hands of 2 Tenants to the Use of *J S* and his Heirs, and afterwards the Copy-holder dieth before the presentment be made of the Surrender by the Tenants, and the Lord before the Presentment accepts of the Rent of *J S* generally, but not as a Copy-holder : the Heir of the Surrenderee may enter into and upon the Lands, and receive the Profits thereof to his own use, for that nothing vesteth in the Surrenderee before Admittance, and the Inheritance of the Copy-hold is in the Heir *quasi* by Descent.

To have Common in the Wastes of the Lord is not a thing incident to his Copy-hold, but is by Prescription or Custome of the Manor. If therefore a Copy-holder purchaseth the Inheritance of the Land, the Interest of the Common being a thing intire is gone and determined. But if the Copy-holder doth surrender part of his Copy-hold-lands to the Use of another, who is admitted, yet his whole Common is not thereby determined, but he shall have Common still for the Lands not surrendered.

*Pasch. 43 E.
liz. adjudge,
acc.*

A Copy-holder may take House-bote, Hedg-bote and Plough-bote upon his Copy-hold-lands of common right, as a thing incident to the Grant, if it be not restrained by a Custome, that the Copy-holder shall not take it but by Assignment of the Lord or his Bailiff. And if the Lord, where the Tenant hath such Botes, cuts down all the Woods and Under-woods which are standing and growing upon the Lands, to prevent the Copy-holder of his Botes, he may have an Action of Trespass against the Lord, as it was Resolved in *Heydon and Smith's Case*, *Pasch. 8 Jac. in Co. B.*

*9 H. 4. t.
Waste 59.
Coke select
Cases 68.*

*M. 8 Jac.
B. R. The
King and
Stafferton's
Case, Yelv.
190, 191.*

A Manor may be Copy-hold, and holden of another Manor by Copy of Court-Roll : and if such a Copy-hold-Manor be granted unto *J S* and his Heirs, *J S* may hold a Copy-Court within his said Manor without a special Grant of it ; for that of common right a Court-Baron or a Copy-hold-Court is incident to every Manor.

*P. 26 Eliz.
C. B. Cham
and Dover's
Case, Leon.
1. part, 16.*

A Lord of a Manor grants a Copy-hold for 3 Lives, and afterwards takes a Wife : The 3 Lives end or determine : The Lord enters into the Manor , and keeps the Copy-hold-lands in his hands for a time, and then grants the Lands over again by Copy, and dieth : The Wife of the Lord enters, and claims Dower in it. In this Case it was Resolved , That the Copy-holder should hold the Lands discharged of the Dower, because the Copy-holder comes and is in the Lands by the Custome, which is paramount to the title of Dower.

*P. 5 Eliz.
by Dyer.
Vid. Moore
50.*

A Copy-holder is seised of Lands at Common Law, and also of Lands holden by Copy of Court-Roll, and he by Indenture without Licence of the Lord, makes one Lease of both Lands, rendring Rent. It was said by *Dyer*, That in such case the whole
Rent

Rent is issuing out of the Lands at Common Law, because the Lease as to the Copy-hold-lands was utterly void.

If the Lord grants to his Copy-holder the Trees growing upon the Lands, and which shall after grow, with liberty to cut them down and carry them away; he may justify the cutting of the Trees which are growing, and it shall not be a Forfeiture of his Copy-hold, because the Lord hath by his Grant dispensed with it: But he cannot cut down the Trees which shall there after grow, as it was said by *Plowden* and *Popham*.

P. 12 Eliz.
in B. R.
Moore 94

If a Copy-holder binds himself in a Statute, his Copy-hold-land shall not be extended upon the said Statute, because the Copy-holder in the eye of the Law hath an Estate but *ad voluntatem Domini secundum Consuetudinem Manerii*: But if a man be Tenant for life or years of a Manor, and a Copy-hold comes to his hands by Forfeiture or other determination, and he binds himself in a Statute; although the Copy-hold be after granted, yet it may be extended upon the Statute, because the Copy-hold was annexed to the Free-hold, and joyned with it in the hands of the Lord, when

Pasc. 12 Eliz.
in B. R. ad
judge. acc.

the Statute was acknowledged and entred into.

M. 3 Jac.
Swayn and
Beckett's
Case, Moore
812.

The Custome of a Manor was, That a Copy-holder might cut and lop Trees for Hedg-bote and other necessities: The Queen made a Lease of the Manor to J S, with Exception of Trees: King James granted the Reversion to J D in Fee: The Assignees of the Term granted a Copy-hold to other for 3 Lives, *Habendum* to them *successive*: The Copy-holder cut Trees. It was Resolved, That the Copy-holder was in by the Custome paramount the Exception, although he took his Estate after the Exception, and therefore might Justifie the cutting of the Trees for the Hedg-bote and other necessities.

35 Eliz. Co.
4. part,
Bullock and
Dibley's
Case.

The Husband seised in Fee of Copy-hold-lands in the right of his Wife surrendered the same to another, who was admitted, and afterwards the Husband died. It was Adjudged that in this case the Wife might enter, and she should not be put to her *Cui in vita*.

M. 9 Jac.
in Co. B. ad-
judge, acc.

If there be Lessee for life, the Remainder for life, of a Copy-hold, and the first Tenant for life doth purchase the Freehold of the Copy-hold, and levies a Fine thereof,

thereof, and 5 years pass : it was Adjudged, That this Fine should bar him in the Remainder of his Copy-hold.

SECT. XIV.

Where the Lord of the Manor shall be Chancellour in his own Court, to determine the Differences which arise betwixt Copy-holders.

A Copy-holder doth surrender his Copy-hold-lands to *A*, to hold the Lands till he hath levied the summe of 100*l.* upon trust that afterwards he shall surrender to the Use of *B* : *A* levies the money, and being required to make the surrender to *B*, he refuseth to doe it ; whereupon *B* exhibits his Bill to the Lord in the Court of the Manor : The Lord there makes a Decree, that *A* make the Surrender to *B*, which he again refuseth to do ; and thereupon the Lord seizeth the Lands, and afterwards admits *B* to the same. It was the opinion of the whole Court in this Case, That both the Seizure of the Lord and his Admittance of *B* were lawfull, because the Lord in such Cases of Equity to execute Trusts

H. 25 Eliz.
in B. R. Le.
on. 1. part, 2.

is

*Vid. 14 H. 4.
34.*

in Chancellour in his own Court.

If a false Judgment be given in a Court-Baron by the Steward against a Copy-holder, the Copy-holder in such case shall not have either a Writ of Errour or a Writ of False Judgment; but he may sue in the Court of the Lord by Bill, to be Relieved against such Judgment; and the Lord, as Chancellour, may give him Relief therein, and shall restore the Land to the party upon the false Judgment given by the Steward, and Restitution made to the Copy-holder.

S E C T. XV.

Of Surrenders upon Conditions; and where such Surrenders shall be good, where not.

Proofs.

*F. 31 Eliz.
Co. 4. part,
Kite and
Queinton's
Case.*

A Copy-holder in Fee surrendred out of Court his Copy-hold-lands to the Use of another and his Heirs upon Condition: At the next Court the Surrender was presented, but in the Presentment the Condition was omitted: He to whose Use the Surrender was made being dead, the Lord admitted his Heir. It

was

was Resolved in this Case, That the Presentment of the Surrender was void, because it was not made in such manner as the Surrender was made. But if the Conditional Surrender had been presented, it had been good, although it was not entered into the Court-Roll.

A Copy-holder surrendered his Copy-hold upon Condition, and afterwards by Deed he released the Condition. Resolved it was good without a Surrender, for that a Condition or a Right cannot properly be said to be determined by a Surrender, but it may be by a Release.

*Tr. 2 Jac.
B. R. Cro. 2.
part, Hall &
Shardbrook's
Case.*

The Case was ; Grandfather, Father, and Son : The Grandfather died : The Father assigned Dower to the Grandmother, being his Mother, who surrendered it back to the Father paying 10 l. per annum : The Father died ; his Wife brought Dower against the Son and recovered, because the Father had the Fee and Freehold conjoined in the life of the Grandmother by the Surrender. It was Resolved in this Case, That when the Wife of the Father doth recover Dower, she shall pay to the Grandmother so much Rent as doth belong to her proportion in Dower. And in this Case it was holden,

*M. 13 E. 3.
13.*

den, That although the Estate of a man be Conditional and defeasible upon a bad Title; yet the Wife shall not be ousted of her Dower untill the Conditional or defeasible Title be defeated. And where Husband and Wife are Tenants for life, and surrender to him in the Reversion, the Wife of him in the Reversion shall be endowed, and yet the Surrender is but Conditional; for if the Wife of the Tenant for life overliveth her Husband, the Surrender is defeasible: *à fortiori* in case where it is not defeasible, as in this Case. And it was said in case of a Surrender of Copy-hold-land, where it was Conditional, the Wife is dowable of it, if the Condition do not determine the Estate in the life-time of the Husband: But a Feme is not dowable of Copy-hold but by Custome of the Manor.

H. 27 Eliz.
Cro. 3. part,
68. Bright
and Hub-
bard's
Case,

A Copy-holder devised his Lands to his Wife for life, and that she should sell the Lands for the payment of his Debts; and surrendered to the Use of his Will: The Copy-holder died: His Wife surrendered the Land upon Condition to pay 12 l. It was adjudged, It was a good Surrender upon the Condition, and that it was a good Sale made by her.

The Father, Copy-holder in Fee, surrendered his Copy-hold-lands to the Use of his Son in Fee, upon Condition to perform Covenants in an Indenture: The Son after Admittance surrendered to *J S* upon Condition that if the Son pay 10% the Surrender to be void: The Son neither pays the 10% nor performs the Covenants in the Indenture: The Father enters. Resolved, That by the Entry of the Father both the Surrenders were avoided, and there the Son might well enter after the death of his Father, and the Surrender made by him to *J S*.

Tr. 33 Eliz.
Cro. 1. part,
Symonds and
Lawn's
Case.

If a Copy-holder doth surrender his Lands to the Use of *J S* and his Heirs absolutely, & the Lord admits the Tenant upon Condition, it is void; for that after Admittance the Tenant is in by him who made the Surrender, & not by the Lord.

33 Eliz. Co.
4. part, West-
wick's Case.

The Custome was, That a Copy-holder might out of Court surrender to the Use of a Stranger in Fee: The Lord of the Manor made *J* his Steward *ad exequendum per se*, or his sufficient Deputy, who made *A* his Deputy *pro hac vice* to take a Surrender of Husband and Wife, the Remainder in Fee: The Deputation was farther, viz. *Et ulterius faciendum*

Tr. 28 Eliz.
in B. R. Cro.
1 part, Bar-
dent's Case.

quan-

quantum in me est : *A* took a Surrender of the Husband and Wife upon Condition, which Condition was afterwards performed and executed. Resolved in this Case, That although the authority to take the Surrender was absolute, and to be without a Condition; yet when *A* took it upon a Condition to be performed, it was a good Surrender made to him, by reason of the words in the Deputation, *Et ulterius faciendum, &c.*

P. 39 Eliz.
B.R. Oland
and Bar-
wick's Case,
Cro. 1. part,
acc.

A Woman Copy-holder *durante Viduitate* sowed the Land, and before Severance of the Corn she took Husband. Resolved, That although the Estate of the Wife was uncertain, and determined by the Limitation, and not by any Condition either in Fact or in Law, that the Lord should have the Corn sowed upon the Lands.

H. 2 Jac.
B.R. Cro. 2.
part, Cur-
ties and
Wolverston's
Case.

A Copy-holder in Fee of Lands descendable in *Borough-English* had 3 Sons, and surrendered to the Use of his Will, and thereby devised his Lands to his middle Son in Fee, upon Condition to pay to his 4 Daughters, to every of them 20% at their full age : The eldest Son had Issue 2 Daughters, and died : The middle Son is admitted, and doth not pay

pay the Daughters their Summs at their full ages : The youngest Son entred in the name of the Daughters , who disagreed to it. It was Resolved, That it was a Condition, but not broken without demand of their Summs at their full ages ; and when they disagreed to the Entry, the Entry of the youngest Brother was not lawfull.

A Copy-holder surrendred his Lands into the hands of the Lord , *Habendum* after his death to the Use of an *Enfant en ventre sa Mer*. Resolved that a Surrender to an *Enfant en ventre sa Mer* was not good as an immediate Surrender , for that it cannot begin at a day to come. And whereas a Remainder was thereupon limited over , it was holden to be void , because it was to begin upon a Condition precedent, (*Vid.* the Condition) which was never performed ; and therefore the Surrender into the hands of the Lord was void, because he takes it but as an Instrument to convey it over.

M. 13 Jac.
B. R. Simpson and Southern's Case,
Cro. 2. part.

SECT. XVI.

Where Custome which warrants the Lord or his Copy-holder to grant greater Estates, warrants the Grants of lesser Estates.

Proofs.

36 Eliz. Co.
4. part, Gra-
venor and
Tedd's Case.

THE Custome of a Manor is, That a Copy-hold-estate may be granted in Fee-simple. In that Case it was adjudged, That an Estate thereof granted to one and the Heirs of his body is good, and within the Custome; for *Ubi licet quod est majus, non debet quod est minus non licere.*

39 Eliz. in
B. R. Downs
and Hop-
kins Case.

The Custome of a Manor is, That Copy-hold-estates may be granted for life or lives: In such case a Grant is made to a Woman *durante Viduitate sua*: And it was adjudged good, and within the Custome, for that every Grant for life is *durante viduitate*; but every Grant *durante viduitate* is not for life.

H. 34 Eliz.
B. R. Stanton
and Bar-
ney's Case.

The Custome of a Manor out of mind used was, To grant certain Lands, parcel of the said Manor, in Fee-simple, and never any Grant was made to any and the Heirs

Heirs of his body for life or for years ;
The Lord of the Manor did make a Grant
by Copy to one for life, the Remainder
over to another and the Heirs of his bo-
dy. It was adjudged, That the Grant
and the Remainder over was good ; for
the Lord having an Authority by Cu-
stome, and an Interest withall, might grant
any lesser Estate : but otherwise it is
where one hath but a bare Authority.

In Trespass the Issue was, if the Lord
of the Manor granted the Lands *per Co-
piam Rotulorum Curie Manerii secundum
Consuetudinem Manerii predicti*. It was
given in Evidence, that the Lord of late
at his Court granted the Lands *per Copiam
Curie*, where it was never granted by Co-
py before. In that case the Jury are
bound to find *quod Dominus non concessit*,
as it was holden by the Court. For al-
though *de facto Dominus concessit per Co-
piam Rotulorum Curie*, yet *non concessit
secundum Consuetudinem Manerii predicti*.
But in that Case it was holden, If Custo-
mary Lands had been grantable in Fee,
if the same Land escheat to the Lord, and
he grant the same to another for life, it
is a good Grant, and warranted by the
Customes, for the Custome which enables

F

him

P. 29 Eliz.
C. B. Kempe
and Carter's
Case, Leon.
1. part, 56.

him to grant in Fee shall enable him to grant for life.

*M. 15 & 16
Eliz. in Co. d
B. adjudge,
acc.*

If a Copy-hold-Estate fall into the hands of the Lord by Escheat, Forfeiture, or the like, and the Lord make a Lease thereof for years or life by Deed or without Deed, or if he make a Feoffment of it upon Condition, or if the Copyhold so escheated, &c. be extended upon a Statute or a Recognizance, or the same Land be assigned to the Wife of the Lord in Dower; In all these cases the Land can never be granted again by Copy, because after such Disposition thereof it was not demiseable. But if the Interruptions were not lawful, but tortious, as if the Lord be disseised, or if the Land be recovered against the Lord by a false Verdict, or by an erroneous Judgment; yet after the Land is re-continued, and the Interruption which was wrongful removed, the Land is grantable again by the Lord by Copy.

SECT.

SECT. XVII.

Who shall be said such a Lord of a Manor as may grant Copy-hold-estates; and how long such Estates shall continue; and what persons shall be capable of Copy-hold-estates, what not; and what may be granted by Copy.

EVery one who hath a lawful Estate or Interest in the Manor, be it Fee, Fee-tail, Dower, Tenantry by the curtesie of England, Tenantry for life or years, Guardian, Tenant by Statute-Merchant or Elegit, are sufficient Lords and persons to grant Copy-hold-estates to others. And in some special case Estates in Copy-hold-lands may be granted by such a one who hath no Estate or Interest in the Manor.

Coke 1 part, Instit. 58.

Proofs.

A Guardian in Socage held a Copy-Court in his own name, and granted Copies in Reversion. Adjudged he was *Dominus pro tempore*, and had an Interest in the Lands; for he might make a Lease

Tr. 1 Jac. B.R. Soap-land and Ridler's Case, Owen 115.

F 2

thereof

thereof in his own name, and therefore he might both grant Copies, and also admit Copy-holders to Estates before granted. But the Bailiff of a Manor hath no Interest in the Manor, and therefore he cannot grant Copies of the Land holden of the Manor.

P. 41 Eliz.
B. R. Gay
and Kay's
Case, Cro. I.
part.

The Custome of a Manor was, That *Dominus pro tempore* might make a Demise for 2 or 3 Lives in Possession or Reversion: A Woman Tenant in Dower for life of the Manor granted a Copyhold to JS and 2 others for their Lives, *Habendum post mortem* of AB, and died: AB died. It was holden by the Court in this Case, That the Grant was good in Reversion, although it was not executed in the life of the Tenant in Dower: And *Vide*, That the Lord of a Manor for life, or any other particular Estate, having Interest in the Manor, might grant Copies in Reversion of Lands which are holden by Copy of Court-Roll, although the Grants were not executed in the life of the Grantors; as it was adjudged in Sir Peter Caren's Case. *Quere*: for Hil. 14 Eliz. in the Earl of Oxford's Case in Moore 95. it is not good, unless it come in Possession during the life of the Grantor.

H. 14 Eliz.
the Earl of
Oxford's
Case, Moore
95.

Note,

Note, It was holden by the Justices *P. 15 Car. C. B. Godb. 6, acc.*
P. 15 Jac. in Co. B. That there ought to be a Custome to enable the Lord of the Manor to make a Grant of a Copy-hold in Reversion.

Generally, Things, which lie not in Tenure, as Advowsons in grosse, Commons in grosse, or the like incorporate Inheritances, out of which a Rent cannot be reserved, cannot be granted by Copy of Court-Roll by the Lord of the Manor; nor can they be holden by any Service to be done for them. But Advowsons appendants, Commons appendants, and such things as are parcel of a Manor, and which have Continuance, may be granted by the Lord of the Manor, to be holden by Copies of Court-Roll, according to the Custome of the Manor.

In Trespass for cutting down of Under-woods, the Question was, Whether Under-woods might be granted by Copy of Court-Roll, for that by such Grant or Lease the Soil passeth not. But it was Resolved, That Under-woods are a thing of Inheritance and perpetuity, which may have Continuance for ever; for after they are once cut, they will grow a-

M. 28 Elm. B. R. Cro. 2. part, Hee and Taylor's Case.

gain *ex stipitibus*, and so they may be well granted by Copy.

P. 43 Eliz.
B. R. Sands
and Darcie's
Case, Cro. I.
part, acc.

In Trover and Conversion of 20 Loads of Tithe-Hay, the onely Question was, Whether Tithes were grantable by Copy. It was objected they were not, because it is against the Nature of Tithes, and none could have a property in them before the Council of *Lateran*, and therefore it was impossible to have any Custom so to grant them. But it was Resolved, That they might be granted by Copy, if there had been a Custom time out of mind so to grant them.

39 H. 6. 9. b.
Vid. M. 11
Jac. Moore
and Good-
greave's
Case, Cro. 2.
part.
Coke 11.
part, Sir
Henry Ne-
vil's Case.
M. 37 Eliz.
B. R. Sir
John Bourne's
Case, acc.

One Manor may be holden of another Manor, and may be demiseable by Copy of Court-Roll, and there may be Customary Tenants; according to the Custom of the Manor; and so it was said, That a Market or a Fair, although they are things of Priviledge and Liberty onely, yet because they might be appendant unto or parcel of a Manor, or used with a Manor and Lands, that an Estate might be granted of them by Copy of Court-Roll,

S E C T. XVIII.

What Acts or things are inseparable, and must be done by the Copy-holder himself; and what acts and where may be done by his Attorney.

A Copy-holder, notwithstanding that generally and according to the Custom of the Manor he hath an Estate of Inheritance in his Copy-hold-lands, viz. *secundum consuetudinem Manerii*; yet it hath this Qualification, that it is *ad voluntatem Domini*: and in that respect, upon the Original Grants of such Estates, the Lords of Manors did reserve unto themselves certain Duties and Services and Suits to be done by their Copy-holders; some of which were so inseparable to the person of the Copy-holder, that they could not be done by any other person; others were such as concerned and had respect both to the Lord for his good, and the good of the Manor, as those which concerned the particular good of the Copy-holders themselves, or the Lands which they held of the Lord.

The principal Duty inseparably to

Co. 9. part,
in Comb's
Case.

be done to the person of the Lord, and by his Copy-holder, is his doing of Fealty, which upon every Admittance he is to do to the Lord, for that is especially mentioned in the Copy granted by the Lord in these words, *viz. Dat. Domino pro Fine, & fecit Domino fidelitatem*: and Fealty cannot be done but in person, and not by an Attorney. And although (as Mr. Littleton saith) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himself, and it must be done by the Copy-holder himself in person.

A Copy-holder may take an Estate in the Copy-hold by the Surrender of another Copy-holder into the hands of two Tenants of the Manor by Custome, (as before is declared.) But then this Surrender must be presented in Court, and he to whose Use the Surrender was made must personally appear in Court, and be there admitted to the Land; and he cannot be admitted by Attorney.

The Suit and Service which is to be done in the Court of the Lord by his Copy-holder must be done in person, and not by another for him; and it is to be done upon his Oath, and a man cannot swear

swear by Attorney; and therefore he cannot make an Attorney to do his Suit and Service, but the same must be done by him in person.

Again, If a Copy-holder, upon Notice given him of the special day of holding the Lord's Court, and being summoned to appear and to do his Suit and Service, shall willfully neglect, or refuse to appear and do his Suit, it is a Forfeiture of his Copy-hold: and therefore such Suits and Services cannot be done by Attorney, but in proper person.

A Copy-holder of a Manor of the Earl of *Arundel* did surrender his Lands to the Use of his Will, and thereby devised them to his youngest Son and his Heirs, who being in Prison made a Letter of Attorney to *J D*, to pray to be admitted to the Land for his Use, and after such Admittance to surrender the same Lands to the Use of *J S* and his Heirs, to whom he had sold it for the payment of his Debts, who came into Court accordingly, and prayed to be admitted, and make a surrender of the Land to *J S*; all which was done. In this Case it was Resolved by the Justices, That it was no good Admittance, nor

*Tr. 28 Eliz.
in B. R.
the Earl of
Arundel's
Case, Leon.
1. part, 36.*

no

no good Surrender; for that the Heir ought to have come himself in person in Court to take up his Land, and afterwards to surrender it, or otherwise have procured the Lord to appoint his Steward to have gone to the Prison unto him to have been admitted, and afterwards to have surrendred the Lands.

Some particular things a Copy-holder may do by his Attorney; as he may pay his Rent by his Servant or Attorney, or tender it by them; and such Payment and Tender shall be good. So if the Custome of the Manor be, That upon the death of every Copy-holder the Tenant shall pay and render his best Beast unto the Lord for a Heriot, there the Heriot may be paid by the Heir before his Admittance, or by the Executor of the Copy-holder; and such Payment or Tender of it shall be good.

*M. & Jac. in
B.R. Bale's
Case.*

So by an especial Custome within the Manor a Copy-holder may appoint or nominate, in the presence of two Tenants of the Manor or other two sufficient Witnesses, who shall have his Copy-holds after his decease, and also that they may appoint what Fine the Lord shall have for the Admittance of the Tenant,

so it be a reasonable Fine; and such Disposition of his Lands and appointment of Fine shall be good by the Custome: But yet after such Disposition made, the party who is to have the Land must in person come into the Lord's Court, and pray to be admitted unto the same. And so was it very lately adjudged in the Court of *Common Pleas*, both for the Point of the Custome, that it was a good Custome, and Admittance.

A Copy-holder dwelling in a Town long distant from the Manor, having Notice of the Court-day when it was to be holden, upon Summons appeared not himself, but appointed his Son his Attorney to appear and do the Services for him for his Copy-hold-lands. In this Case it was holden by the Court, That such a person so appointed might es- soign the Copy-holder, but not do the Services for him, for that none could do the same but the Tenant himself.

*M. 3 Eliz.
B.R. Sir John
Braunche's
Case, Leon. 1.
part, 104.*

S E C T. XIX.

What Customes within Copy-hold-Manors shall be said to be good and reasonable Customes, and what not.

*Coke 4-part,
81.*

Custome is the very Soul and life of Copy-hold-estates; for without Custome, or if they break their Customes, they are at the Lord's will, for they hold their Lands *ad voluntatem Domini*, although (as before is said) it be *secundum Consuetudinem Manerii*, &c. But then the Customes must be reasonable, and not unreasonable Customes.

*Coke 1. part
Institut. 59.*

If the Lord doth challenge a Custome within his Manor, to have a Fine of every of his Copy-holders of the said Manor at the alteration or Change of the Lord of the Manor, be it by Alienation, Demise, Death, or otherwise; this is an unreasonable Custome, for by this means his Copy-holders may be oppressed by the Lords by the payment of a multitude of Fines.

*Coke 5-part,
Penneman's
Case.*

A Custome within a Manor, That every Alienation of Lands within the Manor shall be presented at the next Court hol-

holden for the said Manor, upon pain that such Alienation shall be void, is a good and reasonable Custome; for it is but reasonable that the Lord should know who is his Tenant.

A Copy-holder alledged a Custome within a Manor in *Essex* to be, That all the Tenants within the said Manor had used to cut down Trees, to repair their Copy-hold and Free-hold Tenements within the said Manor, and also to sell their Trees at their pleasures. It was doubted if it was a good Custome: but the better opinion of the Court seemed to be that the Custome was good.

The Custome of a Manor in *Worcester-shire* was, That if any Copy-holder committed Felony, and that the same be presented by 12 Homagers in the Lord's Court, the Tenant should forfeit his Copy-hold. It was presented, that *J S*, a Tenant of the said Manor, had committed Felony at such a time; but that at the Assizes next after he was acquitted of the same: After which the Lord seized the Lands. In this Case it was adjudged, That the Custome was not good, because in judgment of Law, before Conviction or Attainder he was not a Felon.

But

*Paſch. 6 Jac.
in Co. B.
Glaſcock's
Caſe. Vid.
Godb. acc.*

*M. 6 Jac.
in Co. B.
Paginton
and Hunt's
Caſe.*

But whether in that Case the Verdict and finding of the Jurors upon the Bill of Indictment agreeing with the finding of the Homagers, that the party had committed Felony, did entitle the Lord to the Copy-hold-lands, notwithstanding the Acquittal of the Jury which was afterwards, was not Resolved.

A Copy-holder did alledge the Custome of the Manor to be, That the Lord might grant Copies in Remainder with the assent of the Tenants, and not otherwise, and that Copies otherwise granted in Remainder should be void. It was said, That this Custome might be good, for it might be so agreed and granted by the Lord at the beginning upon the Creation of the Manor; and that it seemed to be grounded upon the reason of the Common Law, That a Remainder should not be without the assent of the particular Tenant, and to commence with his Estate; and that therefore it was a good Custome. *Quere* the Case, for it was not Resolved, *M. 31 Eliz. in Co. B.*

The Custome of a Manor was, That those who claimed Copy-holds by Descent ought to come at the first, second, or third Court, upon Proclamations made, to take

*M. 31 Eliz.
Co. B. Godb.
140.*

take up their Estates, or else they should be forfeited. A Tenant of the Manor (having Issue inheritable by the Custome beyond the Sea) died : The Proclamations all passed, and the Heir did not return in two years ; but upon his return he prayed to be admitted to the Copy-hold, and profered the Lord his Fine in Court, which the Lord refused to accept of, and to admit the Heir, but seized the Land as forfeited. It was adjudged in this Case, That it was no cause of Forfeiture, because the Heir was beyond the Seas at the time of the Proclamations, and the Lord was at no prejudice, for that, for any thing appeared in the Case, the Lord had taken all the Profits of the Land in the mean time.

H. 7 Jac. in
Co. B. Cop-
ley's Case.

The Custome of a Manor was, That every Copy-holder at his death should pay to the Lord his best Beast for a Heriot : A Feme-sole within the Manor Tenant for life took a Husband, and died. It was the opinion of *Dodderidge* in this Case, That although the Custome was good, yet, as this Case was, no Heriot should be paid, because the Wife had not any Goods, by Cattel to pay the same,

M. 7 Jac. in
Co. B. by
Dodderidge

A Cu-

M. 42 Eliz.
B. R. Cro.
1. part,
Parker and
Combleford's
Case.

Vid. 3 & 4
Eliz. in Co. B.
Wilson and
Wife's Case,
Moore, acc.

Pasc. 24 E-
liz. Moore
Vide Ship-
wib's Case,
Tr. 33 Eliz.
in Co. B.
Godb. 143.
where the
contrary
seemeth to
be adjudg-
ed:

Pasc. 8 Jac.
in Co. B.
Rapley and
Chaffyn's
Case, acc.

A Custome of a Manor was said to be, That the Lord had used after the death of every one dying within his Manor to have the best Beast of such a person for a Heriot, and to seize and distrain for it. It was adjudged a void Custome, not good to bind a Stranger: but such a Custome to extend to, and bind the Tenants of the Manor might be good.

The Custome of a Manor was, *Quod quilibet tenens per Copiam poterit dimittere terras suas* for life, in Fee, or otherwise; and that a Woman *Coopert a viro poterit devisare* her Copy-hold-lands to any other, or to her Husband, by the assent of the Husband. In this Case the Court held, That the Custome was not unreasonable; but because it was *poterit devisare*, where it ought to have been alledged *usi sunt devisare*, for that cause it was said it was not good.

Note by the whole Court, That if the Custome of a Manor is alledged to be, That the eldest Daughter shall solely inherit the Land, such a Custome may be good: But then such Custome shall be taken strictly, *viz.* That the eldest Sister shall not inherit the Land by force of the said Custome.

It

It was Resolved by the Justices, That a Custome that a Lessee for years may hold the Land for half a year after his Term ended, is no good Custome: But it was agreed, That the Lord of a Copy-hold might by Custome lease the same for life and 40 years after, and that such a Custome was good.

Vid. Moore's Rep. 3 E. 6.

A Custome was alledged, That all Inhabitants of certain Messuages holden of the Bishop of *S* had used to grind their Corn which they used to spend in their Houses, or should sell, at certain Mills, called *the Bishops Mills in S*, and not elsewhere, without the Licence of the Bishop. It was the opinion of the Justices, That it was a void and unreasonable Custome, to grind all their Corn there which they should sell, &c.

Tr. 14 Jac. in Co. B Harbin and Green's Case, Moore 887.

The Custome of the Manor of *Y* in the County of *Dorset* was, That every Copy-holder might name who should have his Copy-hold, and that the Lord ought to admit the Copy-holder so named at the death of the Nominator. *Quere* if it be a good Custome, because the person nominated hath neither *jus ad rem*, *neq* *in re*, the Interest being in the Lord, and a man cannot gain an Interest to him-

P. 13 Jac. Ford and Hoskyn's Case, Moore 842.

45 Eliz. B. R.
Powell and
Peacock's
Case.

Vid. Hob.
Reports 6.
and 11.
Brock and
Spencer's
Case.

P. 41 Eliz.
B. R. Farman
and Bowyer's
Case.

Vid. the
same Case in
Anderson's
2. part, 125,
where it
seemeth the
Custom
was much
doubted, if
good, or
not.

self from the Lord against the will of the Lord. And therefore it was holden, That where the party in that Case brought an Action against the Lord for denying to admit him to the Copy-hold upon such Nomination, the Action would not lie. But *Quare* that Case as to the Custome, for that in 45 *Eliz. in B. R. in Powell and Peacock's Case* it was adjudged, That a Custome that a Copy-holder in Fee might nominate his Successor, and so in *perpetuum*, was adjudged a good Custome. And *Vid.* Brock and Spencer's Case in Hobart 6 and 11. a Custome that such a Copy-holder in Fee might fell Timber-trees was adjudged a good Custome.

The Custome of a Manor was, That if any Tenant allowed his Lands holden of the Manor by Writing or Feoffment, or devised them, or surrendered them into the hands of the Lord of the Manor to the Use of another, that such Alienation, Feoffment, Devise or Surrender ought to be presented within one Year next after. It was said, It was no good Custome, But the Court ruled the Custome to be good and agreeable to the Law; for that it is reason that the Lord should know, &c. *Tant. Vid. before.*

A Cu-

A Custome was, That a Copy-holder of Inheritance might make a Letter of Attorney to two Joynt-tenants, and severally, to surrender his Copy-hold-lands in Fee to certain Uses after his death. It was Resolved, That the Custome was a void Custome, because by the death of the Copy-holder the Lands were settled in the Heir, and an Authority given to devest him was not good.

Vod. Willis and Bucknall's Case in B. R. Style's reports, 341.

The Custome of a manor was, That the Land was devisable by Custome for 21 years, paying the treble value of the Rent, and if the Lessee died, that the Term should be to his Heirs, paying for a Fine one year's Rent, and if he assigned it, the Assignee to have it for one year's value of the Rent, and that he might renew the Devise for 3 years value. The Court held all the said Customs to be good and reasonable.

M. 21 Jac. Cro. 2. part, Page's Case.

The Custome of a Manor was, That if any Copy-hold-tenant did suffer his Mesuage to be ruined for want of Reparations, and the same be presented in Court by the Homage, that such a Tenant should be amerced, and that the Lord had used to distrain the Beasts as well of the Under-tenant as of the Ten-

P. 17 Car. in B. R. Thorne and Tyler's Case.

nant himself, which were levant and couchant upon the Lands, for such Amercement. It was said, That the Custome was not good, but unreasonable, to distrain a Stranger's Cattel, such as the Under-tenant was. But it was Resolved that the Custome was good: for the Under-tenant, although he was but Tenant for a year, yet he should have all the benefits and priviledges which the Copy-holder himself should have had; & *quis sentit Commodum sentire debet & Onus*; and he is distrainable for the Rents and Services due and payable to the Lord; and the Charge lies upon the Land, and not upon the Custome: and therefore the Custome is good.

H. 37 Eliz.
B. R. Brown
and Foster's
Case, Cro. x.
part, acc.

The Custome of a Manor was shewed to be, That any Copy-holder of the Manor may surrender within any place of the Manor into the hands of two Tenants; and if a Surrender be to the Use of a Stranger, without expressing any Estate, that the Lord might grant it in Fee to him to whom the Surrender was made. It was objected, That the Custome was unreasonable, because it is to charge the Land with a greater Estate than the Copy-holder gave. On the other side it was said, That

That the Custome was good ; for that the Lord is Chancellor in his own Court, and might dispose thereof when the Tenant leaves it uncertain. *Quere* ; for the Case was not Resolved.

SECT. XX.

Where and in what case a Copy-holder or his Lessee upon an Ouster may have and maintain against the Ejector an Ejectione firmæ, and where and in what not.

Proofs.

IN *Ejectione firmæ* the Case was , The Plaintiff was Lessee for years of a Copy-hold ; and the Custome of the Manor was , That a Copy-holder might let the Land for 3 years. It was the opinion of *Anderson* Chief Justice, That the Lessee of a Copy-holder cannot maintain *Ejectione firmæ* ; but if he might, he ought to shew his Lessor's Estate, or his Licence, or a special Custome, to warrant it.

H. 28 Eliz.
C. B. Wells
and Partridge's
Case, Cro.
1. part.

A Copy-holder made a Lease for years by Indenture warranted by the Custome. It was adjudged , That the

M. 14 & 15
Eliz. Leon.
1. part, 4.

Lessee should maintain *Ejectione firmae*; although it was strongly objected, That if it were so, then the Plaintiff should have an *Habere facias possessionem*, and so Copy-holds should be ordered by the Laws of the Land.

P. 33 Eliz.
in B. R. Cole
and Wall's
Case, Leon.
1. part, 328.

The Custome of a Manor was, That if any Copy-holder of Inheritance died, his Heir within the age of 14 years, then the Lord of the Manor might grant the Custody of his Body and Lands to whom he pleased: A Copy-holder of Inheritance died, his Heir within the age of 14 years: The Lord committed the Custody of his Body and Lands to J. S., who, being ejected, brought a Writ of *Ejectione Custodia* of his Body. It was the opinion of the Justices, That the Action did not lie. But it was agreed in that Case, That an *Ejectione firmae* lieth upon a Demise of Copy-hold-lands by Lease for years by the Copy-holder himself, but not upon a Demise by the Lord of the Copy-hold.

Coke 4. part,
26. in Mel-
wicke's Case.
M. 8 Jac. in
Co. B. Crane-
ford and
Freston's
Case, acc.

Note, It was Resolved by the Justices, That the Lessee of a Copy-holder for a year may maintain an *Ejectione firmae*: for inasmuch as his Term is warranted by the Law by force of the general Cur-

stone

some of the Realm, it is but reason that, if he be ejected, he should have an *Ejectione firma*; for it is a speedy Course for a Copy-holder to gain the possession of the Land against a Stranger, being no more than what right requires to be yielded him for the Recovery of his Estate.

*H. 39 Eliz.
Cro. 1. part,
Goodwin and
Langhurst's
Case, acc.*

S E C T. XXI.

What Statutes and Acts of Parliament do extend to Copy-holds and Copy-hold-estates, what not.

SOME things concerning this Division being spoken of in the former part of this Treatise, and some particular Statutes there being mentioned within which Copy-holds are included, and in what not, I shall refer the Reader thereunto; adding onely a few Cases upon some particular Acts not therein mentioned; with the Authorities and Resolutions of the Justices therein. And as concerning within what Statutes Copy-holds are, I shall take and relie upon the general Rule which is put in Sir *Edward Coke's* 3. part of his Reports, in *Heydon's Case*, in

*Coke 3. part,
Heydon's
Case.*

viz. When a Statute or Act of Parliament doth alter the Service, Tenure, Interest of the Estate, or other thing in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenant, there the general words of such Statute or Act of Parliament do not extend to Copy-holds or Copy-hold-estates: But when the Statute or Act of parliament is generally made for the good of the Commonweal, and no prejudice can come thereby, by alteration of any Service, Tenure, or Interest, or Custome used within the Manor, there Copy-holds and Copy-hold-estates are within the purview of such Statutes or Acts.

Proofs.

6 Jac. in
Co. B. Coke
Select Cases,
27, 28.

Lint. 16.
sect. 36.

It was Resolved by all the Justices, That no Tenure shall pay for a reasonable Aid to make the eldest Son Knight, or to marry the eldest Daughter, but Tenure by Knight's-Service or Tenure in Socage. Now *Littleton* saith, that all Tenures are either Knight's Service or Socage: And the Statute of *Westm. 1. cap. 36.* of reasonable Aid extends onely to such Tenures. The Question then is, Whether

Copy-hold and Customary Estates. 101

Whether a Copy-hold-Tenure be within that Statute. I shall not determine the Question, for that I do not find it moved in any Book of the Common Law: But although I humbly conceive Copy-holds be within the general words of Mr. Littleton, (all Tenures in Socage;) yet that the said Statute of *Westm. 1. cap. 36.* doth not extend to Copy-holds. *Supra* of it.

The Statute of *Westm. 2. de Donis conditionalibus* I conceive doth not extend to Copy-holds within the general words thereof. The words of the Statute are of Gifts *per Chartam datis*; and Copy-holds do not pass by Deeds, but by Surrenders. But yet it is conceived, that although they be not within the general Words of the Statute, yet they are within the Equity of the said Statute, if there be a Custom to warrant such Estates.

The Case was, A Copy-holder in Fee surrendred his Copy-hold-lands to the Use of his Will; and having a Daughter born, and his Wife with Child, he devised part of his said Lands to his Son or Daughter which his Wife went with, & *Hereditibus suis legitime procreatis*; and the residue thereof he devised to his Daugh-

Statute
*Westm. 2. de
Donis.*

*H. 37 Eliz.
in Co. B.
Church and
Wyatt's
Case, Moore
637.*

Daughter born, to have to her and the fruit of her Body. One Point in this Case was, What Estate the Daughter born had in the said Copy-hold-lands, if in Tail or not. It was said, It was a Fee-tail in the Daughter born. But it was much doubted if it was an Estate within the said Statute *de donis &c.* But in that Case it was agreed, That Copy-hold might be entailed by Custom, co-operating with the said Statute, and if not within the words, yet within the Equity of the said Statute.

Stat. Prærogat. Regiæ, cap. 9 & 10. Co. 8. part, 170. in Tower's Case. Co. 4. part, 127. in Beverly's Case.

The Statute of *Prærogativa Regis* cap. 9 and 10, gives the Lands of Idiots natural to the King, he finding them convenient Maintenance out of the Profits thereof: But if the Idiot hath Copy-hold-lands descended unto him, the King shall not have the Wardship of those Lands therewith, out of the Profits thereof to maintain the Idiot, because the same would be prejudicial to the Lord of the Manor, of whom the Lands are holden by Copy. But yet all Alienations made by an Idiot of his Copy-hold-lands, after Office found, shall be avoided by the King.

Copy-hold-lands are not within the Stat. West. 2. Stat. West. 2. cap. 20. of Executions.

For if a Judgment be had in a Court of Record against a Copy-holder for Debt and Damages, although the Plaintiff may have Execution by *Fieri facias* against his Goods, or a *Capias* against his Body; yet he cannot have Execution of the moyetie of his Copy-holds-lands by *Elegit*, for that Copy-hold-lands are not within that Statute. And so it is, if a Statute-Merchant or Staple be acknowledged by a Copy-holder for the payment of Money at a day certain, which is not payed, his Copy-hold-lands are not extendable for the same. And the reason of these Cases is, because no person can come to Copy-holds but by Admittance of the Lord; and the Lord should thereby lose his Fine which is due upon Admittance, if the party might have the Lands upon Extent delivered unto him.

If Tenant by the Curtesie, or Lessee for years, be of a Manor, and Copy-holds were in his hands by Forfeiture or other

Pasc. 12 E.
liz. in Co. B.
Moore 94.

other determination, and he bindeth himself in a Statute, and afterwards he deviseth the Copy-hold again; the Copy-hold shall be liable to the Statute. But if a Copy-holder bindeth himself in a Statute-Merchant or Staple, his Copy-hold-lands shall not be extended upon the said Statute, because therein he hath but an Estate at will.

Stat. 31
H. 8. cap.
13.

Copy-hold-lands are not within the Statute of 31 H. 8. cap. 13. of Monasteries.

M. 25 & 26
Eliz. in the
Exchequer,
Leon. 1.
part, 4.

The Guardians of the Colledge of Otlery, Lords of a Manor, granted Lands for 3 Lives by Copy, according to the Custome of the Manor; afterwards in 30 H. 8. they leased the Lands to J. S., rendring the accustomed Rent, and afterwards surrendred their Colledge to King Hen. 8. And if the Lease, being within one year of the Surrender, was within the Statute or not, was the Question. The case is not adjudg'd, but a *quære* made of it. But in that Case it was adjudged, That if there be Lord of a Copy-holder for life, and the Lord grants a Rent-charge out of his Manor, of which the Copy-hold is parcell, and then the Copy-holder

der doth surrender to the Use of another, who is admitted; he shall not hold the Lands charged: but if he dieth, so as his Estate is determined, and the Lord grants the Land to another *de novo* to hold by Copy, the new Tenant shall hold the Land charged.

Copy-hold-lands not within the Statute of 32 H. 8. of Rents.

The Lord of a Manor (of which there were Copy-holds) granted a Rent-charge for life, and afterwards made a Feoffment of the Manor to *J S* and his Heirs, who granted a Copy-hold for life: *J S* died, and the Rent was behind, and the Grantee of the Rent distrained for the Arrerages. It was Resolved in that Case, That the possession of the Copy-holder was not chargeable to the Distress, for that the Copy-holder was not in by him who immediately ought to pay the Rent, but in the possession of the Land by the Custome. But *Quare* that Case: and *vide Hill. 18 Eliz. in Co. B. the Earl of Westmorland's Case.* For there the Case was, That the Demesnes of a Manor were usually let for lives

Tr. 27 Eliz. in B.R. Rot. 1201. Sande and Hempstrie's Case, Leon. 2. part, 109.

Hil. 18 Eliz. in Co. B. the Earl of Westmorland's Case, Leon. 3. part, 59.

lives by Copy, and the Lord granted a Rent-charge to *J D pro Consilio impendendo* for life, and afterwards conveyed the Manor to *J N* in Tail: The Rent was behind, and the Grantee of the Rent died, and the Executors of the Grantee distrained for the Arrerages. And there it was adjudged, That the Copy-holder should hold the Lands charged.

Copy-hold-lands not within the Statute of 32 H. 8. of Conditions.

A Copy-holder by Licence made a Lease by Indenture for 21 years rendring Rent: The Lessee covenanted to lay upon the Lands yearly 40 Loads of Dung: Afterwards the Copy-holder surrendered his Lands unto another in Fee, who was admitted. The Point was, If he was such an Assignee as might have Covenant within the Statute of 32 H. 8.

*M. 20 Jac.
in C. B.
Plott and
Plomer's
Case, Cro. I.
part, 17.*

Quere; for the Case was not Resolved.

*Tr. 10 Jac.
in B. R.
Brasier and
Beale's Case,
Tebu. 223.*

A Copy-holder by Licence of the Lord made a Lease for 60 years, if he so long lived, rendring rent, upon Condition to re-enter: The Copy-holder surrendered to the Lessor of the Plaintiff in Fee, who demanded the Rent, which was not pay-

ed.

ed. It was Resolved in this Case, That the Entry of the Lessor was not lawfull, for that Copy-hold-lands were not within the Statute of *Conditions*, nor the Lessor such an Assignee as the Statute intended: For the Assignee of a Copy-holder being in onely by Custome; is not privy to the Lease made by the first Copy-holder, nor in by him, but may plead his Estate immediately under the Lord.

Note, That in no case, where the King claims a share in the Forfeiture of the Lands, (as in the Statute of 2 H. 5. which speaks of Lands forfeited for Heresie, viz. that the King shall have *Annum, diem & vastum*, as he hath for Lands forfeited for Felony) Copy-hold-lands are not within the general words of such Statute; for that in such case, if the Copy-holder committeth Felony, the Copy-hold is presently forfeited to the Lord of the Manor; and therefore out of the words of that Statute, and other the like Statutes.

The Statute of 12 Eliz. cap. 8. which speaks of Inquisitions or Offices found by Escheators, doth not extend to Copy-hold-lands:

lands: for although the same are not found within the Inquisitions or Offices, yet the King shall not be entitled to any of the said Copy-hold-lands, but all such Copy-holders shall and may hold and enjoy their Estates and Interests in their said Copy-hold-lands as formerly they might have done; and the Interest of the Copy-hold is preserved by the said Statute, though it be not found by Office after the death of the King's Tenant.

*Vid. 30 Eliz.
in Scaccario,
Leon. 1.
part, 98.*

The Statute of 13 *Eliz. cap. 4.* of Auditors and Registers of the Queen, doth not extend to Copy-holds, for that it should be a great prejudice.

Then for the second part of this Division.

Proofs.

Copy-hold-lands are within the Statute of 4 H. 7. of Fines.

*Vid. 30 Eliz.
Leon. 99.
acc.*

If I levy a Fine of my Copy-hold-lands, and 5 years pass; not onely the Lord is thereby barred as to the Freehold of it and the Inheritance, but I, who

who am the Copy-holder, am also barred as to my Possession : For the intent of the Statute was to take away all Controversies, & *litibus finem imponere* ; and Contention may as well arise and be about Copy-hold-lands as for Free-hold-lands at the Common Law.

Vid. Coke 3. part, Saityn's Case.

Copy-hold-lands are within the Statute of 29 Eliz. and other Statutes of Recusancy.

A Recusant being convicted for not paying of 20 l. a moneth forfeited by the said Statute, a Commission issued out of the Exchequer to inquire and seize all his Goods, Lands, Tenements and Hereditaments liable to such seizure : Upon the Return of the Commission it appeared, That some of the Lands returned were Copy-hold-lands. It was a question if they were within the Statute. It was the opinion of the Court, That they were within the Equity of the Statute : for the words of the Statute are, *Lands, Tenements and Hereditaments*, which are forcible words ; and the intention of the Statute was, That the Queen should have all the Goods, and the Recusant by

Tr. 30 Eliz. in Scaccario, Saliard and Everat's Case, Leon. 1. part, 97.

H

the

29
110

A Supplement, concerning

the words of the Statute was onely to have the third part of his Lands, which is all that the Law gives him : And if Copy-hold-lands should not be within the Statute, if a Recusant, who had great Possessions onely of Copy-hold-Lands, should go unpunished, it was contrary to the meaning of the Makers of the Act.

Copy-holds are within the Statutes of 13 Eliz. and 1 Jacobi.

Tr. 13 Jac.
in B. R.
Crisp and
Pratt's Case,
Noth. 34, 35,
and 36.

It was Resolved by all the Justices, That Copy-hold is within the Statutes of 13 Eliz. and 1 Jacobi; because it is no prejudice to the Lord, for that there ought to be a Composition with the Lord and the Vendee of the Lands; and although the Sale is and ought to be by Indenture, yet the Vendee ought to be admitted by the Lord. 2. The words of the Statute of 13 Eliz. expressly are; That the Commissioners shall dispose of Lands as well Copy as Free; and the said Statutes shall be construed most beneficially for Creditors, i. e. *summ cuique tribuere.*

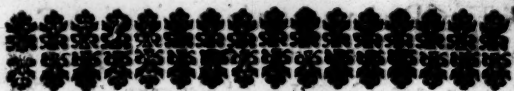
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Copy-hold and Customary Estates.

By III

There are divers other Statutes and Acts of Parliament which extend to Copy-hold-lands, viz. 1. The Statute of 5 Eliz. cap. 13 & 14. of Forgery. 2. The Statutes of 5 R. 2. of Departure out of the Realm, and 14 Eliz. of Fugitives. 3. The Statute of 32 H. 8. cap. 9. of Buying of Pretensed Titles. All which Statutes extend to Copy-hold-lands; of which I might shew many Cases and Resolutions of the Justices in their several Courts. But because the same would make this Section to be long and tedious, and my Intention was to use much brevity in this Addition and Amplification of what in the former part of this Treatise hath been written concerning Copy-hold and Customary Estates; I shall here put an End to the Work.

FINIS.



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